

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 670 & 684

91ST GENERAL ASSEMBLY

Reported from the Committee on Aging, Families and Mental Health, February 18, 2002, with recommendation that the Senate Committee Substitute do pass.

2848S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 191.900, 191.910, 198.012, 198.029, 198.032, 198.067, 198.070, 198.082, 198.090, 198.526, 198.532, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.305, 660.315, 660.317 and 660.320, RSMo, relating to protection of the elderly, and to enact in lieu thereof thirty-two new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 191.900, 191.910, 198.012, 198.029, 198.032, 198.067, 198.070, 198.082, 198.090, 198.526, 198.532, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.305, 660.315, 660.317 and 660.320, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 187.010, 187.020, 187.024, 187.028, 187.030, 187.034, 187.050, 187.080, 187.084, 187.087, 187.102, 191.900, 191.910, 198.012, 198.029, 198.030, 198.032, 198.033, 198.067, 198.082, 198.090, 198.526, 198.532, 344.050, 565.200, 660.030, 660.050, 660.051, 660.083, 660.252, 660.401 and 1, to read as follows:

187.010. As used in this chapter unless the context clearly indicates otherwise, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional injury or harm. "Abuse" includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent;

(2) "Department", the Missouri department of health and senior services;
(3) "Director", the director of the department of health and senior services;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(4) "Eligible adult", a person sixty years of age or older or an adult with a disability, as defined in section 660.053, RSMo, between the ages of eighteen and fifty-nine who is unable to protect his own interests or adequately perform or obtain services which are necessary to meet his essential human needs;

(5) "Facility" or "long-term care facility", any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility;

(6) "Health care provider", any person who is paid to deliver or purports to deliver any health care, including any employee, agent or other representative of such person;

(7) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;

(8) "In-home services employee", a person employed by an in-home services provider agency;

(9) "In-home services provider agency", a business entity under contract with the department or a Medicaid participation agreement, or an agency licensed by the department of health pursuant to sections 197.400 to 197.470, RSMo, that employs persons to deliver any kind of services provided for eligible adults in their private homes;

(10) "Intermediate care facility", any premises, other than a residential care facility I, residential care facility II or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board, personal care, and basic health and nursing care services under the daily supervision of a licensed nurse and under the direction of a licensed physician to three or more residents dependent for care and supervision and who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility;

(11) "Least restrictive environment", a reasonably available setting or mental health program where care, treatment, habilitation or rehabilitation is particularly suited to the level and quality of services necessary to implement a person's individualized treatment, habilitation or rehabilitation plan and to enable the person to maximize his functioning potential to participate as freely as feasible in normal living activities, giving due consideration to potentially harmful effects on the person and the safety of other facility or program clients and public safety. For some mentally disordered or mentally retarded persons, the least restrictive environment may be a facility operated by the department, a private facility, a supported community living situation, or an alternative community program designed for persons who are civilly detained for outpatient treatment or who are conditionally

released pursuant to chapter 632, RSMo;

(12) "Likelihood of serious physical harm", one or more of the following:

(a) A substantial risk that physical harm to an eligible adult will occur because of such adult's failure or inability to provide for his or her essential human needs as evidenced by acts or behavior which has caused such harm or which gives another person probable cause to believe that the eligible adult will sustain such harm;

(b) A substantial risk that physical harm will be inflicted by an eligible adult upon himself or herself, as evidenced by recent credible threats, acts or behavior which has caused such harm or which places another person in reasonable fear that the eligible adult will sustain such harm;

(c) A substantial risk that physical harm will be inflicted by another upon an eligible adult as evidenced by recent acts or behavior which has caused such harm or which gives another person probable cause to believe the eligible adult will sustain such harm;

(d) A substantial risk that further physical harm will occur to an eligible adult who has suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting of his financial resources by another person;

(13) "Neglect", the failure to provide, by those responsible for the care, custody and control of a person, the services which are reasonable and necessary to maintain the physical and mental health of such person, when such failure presents either an imminent danger to the health, safety or welfare of the person or a substantial probability that death or serious physical harm would result;

(14) "Protective services", services provided by the state or other governmental or private organizations or individuals which are necessary for the eligible adult to meet his or her essential human needs;

(15) "Resident", a person who by reason of aging, illness, disease or physical or mental infirmity receives or requires care and services furnished by a facility and who resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding twenty-four consecutive hours;

(16) "Residential care facility I", any premises, other than a residential care facility II, intermediate care facility or skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour care to three or more residents, who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility and who need or are provided with shelter, board and with protective oversight, which may include storage and distribution or administration of medications and care during short-term illness or recuperation;

(17) "Residential care facility II", any premises, other than a residential care facility I, an intermediate care facility or a skilled nursing facility, which is utilized by its owner, operator or manager to provide twenty-four hour accommodation, board and care to three or more residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility and who need or are provided with supervision of diets, assistance in personal care, storage and distribution or administration of medications, supervision of health care under the direction of a licensed physician and protective oversight, including care during short-term illness or recuperation;

(18) "Skilled nursing facility", any premises, other than a residential care facility I, a residential care facility II or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four hours a day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill.

187.020. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, resident intern, nurse practitioner, physicians' assistant, nurse, hospital and clinic personnel engaged in examination, care or treatment of persons, other health practitioners, medical examiner, coroner, psychologist, mental health professional, social worker, minister, Christian Science practitioner, pharmacist, physical therapist, facility administrator, employee in a facility or employee of the department of health and senior services, the department of health or the department of mental health, in-home services owner, operator or employee, adult day care worker, probation or parole officer, peace officer, law enforcement official, or other person with responsibility for the care of a person sixty years of age or older or an eligible adult believes or has cause to believe that such person or adult including a resident of a long-term care facility, an individual residing in their home or residence, or an in-home services client, has been abused or neglected, he or she shall, within twenty-four hours, report or cause a report to be made to the department.

2. In addition to those persons required to report pursuant to subsection 1 of this section, any other person who believes or has cause to believe that a person sixty

years of age or older or an eligible adult, a resident of a long-term care facility or an in-home services client has been abused or neglected may report such information to the department.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within twenty-four hours as required in this section is guilty of a class A misdemeanor.

4. Anyone, except any person who has abused or neglected a resident in a long-term care facility, an individual residing in their home or residence or an in-home services client, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith or with malicious purpose. Any person who purposely files a false report of elder abuse or neglect pursuant to this section or section 187.030 is guilty of a class A misdemeanor.

5. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.

6. The department shall maintain statistics based on all death certificates and shall distribute or report to the division of health standards and licensure on details of persons over age sixty-five.

187.024. 1. If an abuse and neglect report made pursuant to section 187.020 involves a resident of a long-term care facility, the report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant and any other information which might be helpful in an investigation.

2. Upon receipt of a report pursuant to section 187.020 involving a resident of a long-term care facility, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's spouse or closest relative in the line of consanguinity or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated unless such resident's next of kin is the alleged perpetrator of the abuse or neglect. For reports involving imminent harm, the department shall commence an on-site investigation within twenty-four hours. As provided in section 187.030, suspected reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency.

3. If the investigation indicates possible abuse or neglect of a resident, the

investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

4. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 1 and 3 of this section shall be reported to any person with durable power of attorney for or any person with legal guardianship for the resident who is the subject of the complaint and investigation unless such person is the alleged perpetrator of the abuse or neglect, or if the resident objects.

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

6. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department of aging information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

7. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

8. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 187.080 to have recklessly, knowingly or purposely abused or neglected a resident while employed in any facility.

9. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not

be counted or reported by the department as a hot-line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

187.028. 1. If a report is made pursuant to section 187.020 that involves an eligible adult not residing in a facility, the report shall contain the names and addresses of the eligible adult, information regarding the nature of the abuse or neglect, the name of the complainant and any other information which may be helpful in an investigation. In addition, if a report made pursuant to section 187.020 involves an eligible adult who is also an in-home services client, the report shall also contain the names and addresses of the in-home services provider agency and the in-home services employee. If the report is made by a physician of the in-home services client, then the department shall maintain contact with the physician regarding the progress of the investigation. When a report of suspected abuse or neglect of an in-home services client is received by the department, the client's case manager and the department nurse shall be notified. The client's case manager shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize the in-home services provider nurse to assist the case manager with the investigation.

2. Upon receipt of a report pursuant to section 187.020 involving an eligible adult not residing in a facility, the department shall initiate a prompt and thorough investigation.

3. If the investigation indicates possible abuse or neglect of the eligible adult not residing in a facility, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the eligible adult not residing in a facility from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the eligible adult not residing in a facility in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of an eligible adult not residing in a facility, for a period not to exceed thirty days.

4. If such person is an in-home services employee and has been determined guilty by a court, and if the supervising in-home services provider willfully and knowingly failed to report known abuse by said employee to the department, then the supervising in-home services provider may be subject to administrative penalties of

one thousand dollars per violation. The department shall establish a quality assurance and supervision process for clients. The process shall require an in-home services provider agency to verify compliance with program standards and verify the accuracy of records kept by an in-home services employee.

5. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 1 and 3 of this section shall be reported to any person authorized pursuant to paragraph (h) of subdivision (5) of subsection 1 of section 198.088, RSMo, any person with durable power of attorney for or any person with legal guardianship for the eligible adult not residing in a facility who is the subject of the abuse or neglect unless such person is the alleged perpetrator of the abuse or neglect or if the eligible adult not residing in a facility objects.

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

7. No person, including any person who directs or exercises any authority in an in-home services provider agency, shall harass, dismiss or retaliate against an eligible adult not residing in a facility or an in-home services employee because the eligible adult, employee or any member of his or her family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which the eligible adult, employee or family member thereof has reasonable cause to believe has been committed or has occurred.

8. Any person who knowingly abuses or neglects an eligible adult not residing in a facility shall be guilty of a class D felony.

9. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 187.080 to have recklessly, knowingly or purposely abused or neglected an eligible adult not residing in a facility while employed by an in-home services provider agency.

187.030. 1. The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement agency and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo.

2. The department and law enforcement agencies shall require training and cross-training of all investigatory personnel and other persons as deemed necessary

regarding the proper handling of cases involving elder abuse. All noninvestigatory personnel and volunteers for local area agencies on aging shall be instructed on the identification and reporting procedures for abuse and neglect to ensure that such personnel and volunteers are able to recognize potential cases of abuse or neglect. Nothing in this subsection shall be construed to allow noninvestigatory personnel and volunteers to act in an investigatory capacity in investigations of elder abuse or neglect. The department, in cooperation with law enforcement agencies, shall, by rule, develop a checklist for department and law enforcement personnel to follow when investigating possible elder abuse.

3. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

187.034. Any person, official or institution complying with the provisions of section 187.020 in the making of a report or in cooperating with the department in any of its activities pursuant to sections 187.020 to 187.050, except any person, official or institution violating section 565.180, 565.182 or 565.184, RSMo, shall be immune from any civil or criminal liability for making such a report or in cooperating with the department, unless such person acted negligently, recklessly, in bad faith or with malicious purpose.

187.050. 1. Any person having reasonable cause to believe that a misappropriation of property or funds of an eligible adult not residing in a facility, or the falsification of any documents verifying service delivery to such eligible adult has occurred, shall report such information to the department.

2. For each report the department shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, the eligible adult not residing in a facility, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee, or any person who puts to his or her own use or the use of the in-home services provider agency, or otherwise diverts any personal property or funds from an eligible adult not residing in a facility, or willingly and knowingly falsifies any documents for service delivery to an eligible adult not residing in a facility is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information gained from such investigation to appropriate law enforcement agencies.

5. If the investigation indicates probable misappropriation of property or funds

or falsification of any documents for service delivery of an eligible adult not residing in a facility, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action.

6. Reports shall be confidential except pursuant to lawful subpoena, as provided in section 187.087, provided that the information in subsections 3 and 6 of this section shall be reported to any person authorized pursuant to paragraph (h) of subdivision (6) of subsection 1 of section 198.088, RSMo, any person with durable power of attorney for or any person with legal guardianship for the eligible adult not residing in a facility who is the subject of the misappropriation or falsification unless such person is the alleged perpetrator of the misappropriation or falsification, or if the eligible adult not residing in a facility objects.

7. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith or with malicious purpose.

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

9. No person shall harass, dismiss or retaliate against an eligible adult not residing in a facility or an in-home services employee because the eligible adult, employee or any member of his or her family has made a report of any violation or suspected violation of laws, standards or regulations applying to the in-home services provider agency or any in-home services employee which the eligible adult, employee or family member thereof has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department to, pursuant to section 187.080, have misappropriated any property or funds or falsified any documents for service delivery of an eligible adult not residing in a facility while employed by an in-home services provider agency.

187.080. 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 the person's 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 subsections 9 and 10 of this section.

3. If the person so notified wishes to challenge the allegation, he or she 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 applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date for hearing.

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

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

7. A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided in chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final

determination that the person shall be placed on the employee disqualification list.

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

9. The following persons shall receive an automatic lifetime listing on the employee disqualification list:

(1) Any person who has, within the past ten years, been convicted of, pled guilty to or nolo contendere to any felony stealing offense or any felony offense in chapter 198, 565, 566, 568 or 573, RSMo;

(2) Based on substantiated reports, any person who intentionally or negligently inflicts serious physical injury or causes the death of another person.

10. Except as provided in subsection 9 of this section, 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 following:

(1) Whether the person acted recklessly, knowingly or purposely, as defined in chapter 562, RSMo;

(2) The degree of physical, sexual or emotional injury or harm caused to a resident or in-home services client; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

(7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department's requirements.

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

12. The department shall provide the list maintained pursuant to this section

to other state departments upon request and to any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;**
- (2) Provides in-home services under contract with the department;**
- (3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;**
- (4) Is approved by the department to issue certificates for nursing assistants training; or**
- (5) Is an entity licensed pursuant to chapter 197, RSMo. The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.**

13. No person, corporation or association responsible for providing health care service shall knowingly employ any person whom the employer has confirmed to be on the employee disqualification list. Any such person, corporation or association, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

14. Any employer who is required to discharge an employee because the employee was placed on a disqualification list maintained by the department of health and senior services after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.

15. Any person who has been listed on the employee disqualification list, other than a person who has a lifetime listing, may request that the director remove his or her name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.

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

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;**
- (2) Provides in-home services under contract with the department;**
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;**
- (4) Is an entity licensed pursuant to chapter 197, RSMo; or**
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.**

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

3. Prior to hiring any person for a full-time, part-time or temporary position who has contact with any patient or resident the provider shall, or in the case of temporary employees hired through an employment agency, the employment agency shall, prior to sending a temporary employee to a provider:

(1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence; and

(2) Make an inquiry to the department of health and senior services, whether the person is listed on the employee disqualification list as provided in section 187.080.

4. When the provider requests a criminal background check pursuant to section 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check.

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

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

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

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 187.080.

6. An applicant who knowingly fails to disclose his or her criminal history as

required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be a felony stealing offense, child abuse or neglect, a felony violation of chapter 198, 334, 565, 566, 568, 569 or 573, RSMo, a violation of section 565.184, RSMo, or any violation of subsection 3 of section 187.020 or section 568.020, RSMo, or the person or the person's foster care license has been refused, suspended or revoked pursuant to section 210.496, RSMo, if such refusal, suspension or revocation is related to care or protection of children, or the person is disqualified for employment by the department of mental health pursuant to section 630.170, RSMo.

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

8. The department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.

9. Any provider that demonstrates a pattern of violation of this section shall be subject to the civil penalties established in section 198.067, RSMo, regardless of whether such violations have been or are being corrected.

187.087. 1. Reports confidential pursuant to this section, sections 187.020 to 187.034 and sections 187.050 and 187.080 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident or the eligible adult not residing in a facility mentioned agrees to disclosure of his or her name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds or falsification of any documents verifying service delivery to an eligible adult not residing in a facility;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the department of family services for the purpose of licensure pursuant to chapter 210, RSMo.

2. The department shall, upon request, provide to the department of employment security within the department of labor and industrial relations copies of the investigative reports that led to an employee being placed on the disqualification list.

187.102. Pursuant to sections 187.010 to 187.102, the department of social services, the department of health and senior services, and the department of mental health shall work cooperatively in the investigation of abuse and neglect, when appropriate.

191.900. As used in sections 191.900 to 191.910, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse" includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent;

(2) "Claim", any attempt to cause a health care payer to make a health care payment;

(3) "False", wholly or partially untrue. A false statement or false representation of a material fact means the failure to reveal material facts in a manner which is intended to deceive a health care payer with respect to a claim;

(4) "Health care", any service, assistance, care, product, device or thing provided pursuant to a medical assistance program, or for which payment is requested or received, in whole or part, pursuant to a medical assistance program;

(5) "Health care payer", a medical assistance program, or any person reviewing, adjusting, approving or otherwise handling claims for health care on behalf of or in connection with a medical assistance program;

(6) "Health care payment", a payment made, or the right under a medical assistance program to have a payment made, by a health care payer for a health care service;

(7) "Health care provider", any person delivering, or purporting to deliver, any health care, and including any employee, agent or other representative of such a person;

(8) "Medical assistance program", [any program to provide or finance health care to recipients which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly] **any federal health care program, as defined in 42 U.S.C. Section 1320a-7b(f).** The term "medical assistance program" shall include the medical assistance program provided by section 208.151, RSMo, et seq., and any state agency or agencies administering all or any part of such a program;

(9) "Person", a natural person, corporation, partnership, association or any legal entity.

191.910. 1. The attorney general shall have authority to investigate alleged or suspected violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910** and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910** as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful acts proscribed by chapter 407, RSMo, provided that if the attorney general exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; **and may exercise all of the powers provided by sections 542.271 to 542.296, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910 or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910;** and may exercise all of the powers provided by subsections 1 and 2 of section 578.387, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section 191.905 involve "public assistance" as defined by section 578.375, RSMo. The attorney general and [his] **the attorney general's** authorized investigators shall be authorized to serve all subpoenas, **including investigative subpoenas**, and civil process related to the enforcement of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910** and chapter 407, RSMo. [In order for the attorney general to commence a state prosecution] For violations of sections 191.900 to 191.910, the attorney general shall **either commence a state prosecution or** prepare and forward a report of the violations to the appropriate prosecuting attorney. Upon receiving a referral, the prosecuting attorney shall either commence a prosecution based on the report by the filing of a complaint, information, or indictment within sixty days of receipt of said report or shall file a written statement with the attorney general explaining why criminal charges should not be brought. [This time period may be extended by the prosecuting attorney with the agreement of the attorney general for an additional sixty days.] If the prosecuting attorney commences a criminal prosecution, the attorney general or [his] **the attorney general's** designee shall be permitted by the court to participate as a special assistant prosecuting attorney in settlement negotiations and all court proceedings, subject to the authority of the prosecuting attorney, for the purpose of providing such assistance as may be necessary. If the prosecuting attorney fails to commence a prosecution [and fails to file a written statement listing the reasons why criminal charges should not be brought] within the appropriate time period, or declines to prosecute on the basis of inadequate office resources, the attorney general [shall have authority to] **may** commence prosecutions for violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910.** In cases where a defendant pursuant to a common scheme or

plan has committed acts which constitute or would constitute violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910** in more than one state, the attorney general shall have the authority to represent the state of Missouri in any plea agreement which resolves all criminal prosecutions within and without the state, and such agreement shall be binding on all state prosecutors.

2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900 to 191.910** any record in the possession or control of a health care provider, or in the possession or control of another person on behalf of a health care provider, including but not limited to any record relating to patient care, business or accounting records, payroll records and tax records, whether written or in an electronic format, shall be made available by the health care provider to the attorney general or the court, and shall be admissible into evidence, regardless of any statutory or common law privilege which such health care provider, record custodian or patient might otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose any record obtained pursuant to this section, other than in connection with a proceeding instituted or pending in any court or administrative agency. The access, provision, use, and disclosure of records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said section, as may be amended from time to time, and to regulations promulgated pursuant to said section.

3. Sections 191.900 to 191.910 shall not be construed to prohibit or limit any other criminal or civil action against a health care provider for the violation of any other law. Any complaint, investigation or report received or completed pursuant to sections **[198.070 and] 187.020 to 187.028, RSMo, section** 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or **[sections 660.300 and 660.305]** **section 187.050**, RSMo, which indicates a violation of sections 191.900 to 191.910, shall be referred to the attorney general. A referral to the attorney general pursuant to this subsection shall not preclude the agencies charged with enforcing the foregoing sections from conducting investigations, providing protective services or taking administrative action regarding the complaint, investigation or report referred to the attorney general, as may be provided by such sections; provided that all material developed by the attorney general in the course of an investigation pursuant to sections 191.900 to 191.910 shall not be subject to subpoena, discovery, or other legal or administrative process in the course of any such administrative action. Sections 191.900 to 191.910 take precedence over the provisions of sections **[198.070 and] 187.020 to 187.028, RSMo, section** 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and **[sections 660.300 and 660.305]** **section 187.050**, RSMo, to the extent such provisions are inconsistent or overlap.

198.012. 1. The provisions of **section 187.020, RSMo, and** sections 198.003 to 198.136 shall not apply to any of the following entities:

- (1) Any hospital, facility or other entity operated by the state or the United States;
- (2) Any facility or other entity otherwise licensed by the state and operating exclusively under such license and within the limits of such license, unless the activities and services are or are held out as being activities or services normally provided by a licensed facility [under] **pursuant to section 187.010, RSMo, and** sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, except hospitals licensed [under] **pursuant to** the provisions of chapter 197, RSMo;
- (3) Any hospital licensed [under] **pursuant to** the provisions of chapter 197, RSMo, provided that the residential care facility II, intermediate care facility or skilled nursing facility are physically attached to the acute care hospital; and provided further that the department of health in promulgating rules, regulations and standards pursuant to section 197.080, RSMo, with respect to such facilities, shall establish requirements and standards for such hospitals consistent with the intent of this chapter, **section 187.020, RSMo, and** sections 198.067, [198.070,] 198.090, 198.093 and 198.139 to 198.180 shall apply to every residential care facility II, intermediate care facility or skilled nursing facility regardless of physical proximity to any other health care facility;
- (4) Any facility licensed pursuant to sections 630.705 to 630.760, RSMo, which provides care, treatment, habilitation and rehabilitation exclusively to persons who have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as defined in section 630.005, RSMo;
- (5) Any provider of care under a life care contract, except to any portion of the provider's premises on which the provider offers services provided by an intermediate care facility or skilled nursing facility as defined in section 198.006. For the purposes of this section, "provider of care under a life care contract" means any person contracting with any individual to furnish specified care and treatment to the individual for the life of the individual, with significant prepayment for such care and treatment.

2. Nothing in this section shall prohibit any of these entities from applying for a license [under] **pursuant to** sections 198.003 to 198.136.

198.029. The provisions of section 198.026 notwithstanding, whenever a duly authorized representative of the department finds upon inspection of a licensed facility, and the director of the department finds upon review, that the facility or the operator is not in substantial compliance with a standard or standards the violations of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result and which is not immediately corrected, the department shall:

(1) Give immediate written notice of the noncompliance to the operator, administrator or person managing or supervising the conduct of the facility **and a copy of such notice to the attorney general** at the time the noncompliance is found;

(2) Make public the fact that a notice of noncompliance has been issued to the facility. Copies of the notice shall be sent to appropriate hospitals and social service agencies;

(3) Send a copy of the notice of noncompliance to the department of family services of the department of health and senior services, the department of mental health, and any other concerned federal, state or local government agencies. The facility shall post in a conspicuous location in the facility a copy of the notice of noncompliance and a copy of the most recent inspection report.

198.030. Every residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility shall post a current inspection report.

198.032. 1. Nothing contained in **sections 187.020 to 187.050, RSMo, and** sections 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical, social, personal or financial records of any resident in any facility, except when disclosed in a manner which does not identify any resident, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department;
- (2) The attorney general;
- (3) The department of mental health for residents placed through that department;
- (4) Any appropriate law enforcement agency;

(5) The resident, [his] **the resident's** guardian, or any other person designated by the resident; and

(6) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and written reports of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with [section 198.070] **sections 187.020 to 187.028, RSMo,** and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints.

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall

electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

4. Although reports to the central registry may be made anonymously, the department shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect, attempt to obtain the name and address of any person making a report.

198.033. 1. Every facility shall have one regular state licensure inspection during any fifteen-month period.

2. One or more additional inspections must be conducted if:

(1) A facility receives a class I deficiency or a citation at F level or above on the federal survey grid; or

(2) A facility fails to correct class II or class III deficiencies or citations at the E level or below on the federal survey grid at the time of its first revisit after an inspection or survey.

3. A second inspection may be conducted if there is a change in ownership of the facility.

4. The term "inspection" as used in this section shall not include a revisit or a complaint investigation or a survey conducted pursuant to federal survey and certification process.

5. Nothing contained herein shall prohibit the department from making such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.036.

198.067. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096, to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no [less] later than fifteen days after the filing of the action.

2. The department **or attorney general** may bring an action in circuit court to recover a civil penalty against the licensed operator of the facility as provided by this section. Such action shall be brought in the circuit court for the county in which the facility is located. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of

Section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is liable to the state for civil penalties of up to ten thousand dollars for each day that the violations existed or continue to exist. Violations shall be presumed to continue to exist from the time they are found until the time the department finds them to have been corrected. The amount of the penalty shall be determined as follows:

- (1) For each violation of a class I standard, not less than one hundred fifty dollars nor more than one thousand dollars;
- (2) For each violation of a class II standard, not less than fifty dollars nor more than five hundred dollars;
- (3) For each violation of a class III standard, not less than fifteen dollars nor more than one hundred fifty dollars;
- (4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;
- (5) For each specific class I violation by the same operator which has been cited **previously** within the past twenty-four months and for each specific class II or III violation by the same operator which has been cited **previously** within the past twelve months, double the amount last imposed.

As used in this subdepartment the term "violation" shall mean a breach of a specific state or federal standard or statute which remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code. A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

4. Any individual who willfully and knowingly certifies pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment. Any individual who willfully and knowingly causes another individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.
5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.
6. Penalties collected pursuant to this section shall be deposited in the department elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such penalties shall not be considered a charitable contribution for tax purposes.
7. To recover any civil penalty, the moving party shall prove by clear and convincing

evidence that the violation occurred.

8. The licensed operator of a facility against whom an action to recover **a** civil penalty is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo, at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

9. The amount of any civil penalty assessed by the circuit court pursuant to this section shall be reduced by the amount of any civil monetary penalty which the licensed operator of the facility may establish it has paid pursuant to the laws of the United States for the breach of the same federal standards **and arising out of the same conduct** for which the state action is brought.

10. In addition to the civil penalties specified in subdepartment (1) of subsection 3 of this section, any facility which is cited with **a violation of a class I standard** pursuant to subsection 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual nature pursuant to subdepartment (1) of section 198.006, to any resident of that facility shall be liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section, "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care facility after January 1, 1980, shall have successfully completed a nursing assistant training program approved by the department [or shall enroll in and begin the first available approved training program which is scheduled to commence within ninety days of the date of the nursing assistant's employment] **which shall be completed within one hundred twenty days of employment.** Training programs shall be offered at a location most reasonably accessible to the enrollees in each class. The program may be established **and carried out** by the skilled nursing or intermediate care facility, by a professional organization, or by the department, and training shall be given by the personnel of the facility, by a professional organization, by the department, by any junior college or by the vocational education department of any high school. **No program shall offer or provide training pursuant to this section unless the department has approved the program prior to the offering or provision of such training.**

2. As used in this section the term "nursing assistant" means an employee, including a nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to

provide or assist in the provision of direct resident health care services under the supervision of a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply to any person otherwise licensed to perform health care services under the laws of this state. It shall not apply to volunteers or to members of religious or fraternal orders which operate and administer the facility, if such volunteers or members work without compensation.

3. The training program after January 1, 1989, shall consist of at least the following:

(1) A training program consisting of at least seventy-five classroom hours of training on basic nursing skills, clinical practice, resident safety and rights, the social and psychological problems of residents, and the methods of handling and caring for mentally confused residents such as those with Alzheimer's disease and related disorders, and one hundred hours supervised and on-the-job training. The one hundred hours **shall be completed within one hundred twenty days of employment and** may consist of normal employment as **a nurse [assistants]** **assistant** under the supervision of a licensed nurse; and

(2) Continuing in-service training to assure continuing competency in existing and new nursing skills. **[All nursing assistants trained prior to January 1, 1989, shall attend, by August 31, 1989, an entire special retraining program established by rule or regulation of the department which shall contain information on methods of handling mentally confused residents and which may be offered on premises by the employing facility.]**

4. Nursing assistants who have not successfully completed the nursing assistant training program prior to employment may begin duties as a nursing assistant only after completing an initial twelve hours of basic orientation approved by the department and may provide direct resident care only if under the general supervision of a licensed nurse prior to completion of the seventy-five classroom hours of the training program.

198.090. 1. An operator may make available to any resident the service of holding in trust personal possessions and funds of the resident and shall, as authorized by the resident, expend the funds to meet the resident's personal needs. In providing this service the operator shall:

(1) At the time of admission, provide each resident or **[his] the resident's** next of kin or legal guardian with a written statement explaining the resident's rights regarding personal funds;

(2) Accept funds and personal possessions from or for a resident for safekeeping and management, only upon written authorization by the resident or by **[his] the resident's** designee, or guardian in the case of an adjudged incompetent;

(3) Deposit any personal funds received from or on behalf of a resident in an account separate from the facility's funds, except that an amount to be established by rule of the department may be kept in a petty cash fund for the resident's personal needs;

(4) Keep a written account, available to a resident and **[his] a resident's** designee or

guardian, maintained on a current basis for each resident, with written receipts, for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident;

(5) Provide each resident or [his] **the resident's** designee or guardian with a quarterly accounting of all financial transactions made on behalf of the resident;

(6) Within five days of the discharge of a resident, provide the resident, or [his] **the resident's** designee or guardian, with an up-to-date accounting of the resident's personal funds and return to the resident the balance of [his] **the resident's** funds and all [his] **the resident's** personal possessions;

(7) Upon the death of a resident who has been a recipient of aid, assistance, care, services, or who has had moneys expended on his **or her** behalf by the department of health and senior services, provide the department a complete account of all the resident's personal funds within sixty days from the date of death. The total amount paid to the decedent or expended upon his **or her** behalf by the department shall be a debt due the state and recovered from the available funds upon the department's claim on such funds. The department shall make a claim on the funds within sixty days from the date of the accounting of the funds by the facility. The nursing facility shall pay the claim made by the department of health and senior services from the resident's personal funds within sixty days. Where the name and address are reasonably ascertainable, the department of health and senior services shall give notice of the debt due the state to the person whom the recipient had designated to receive the quarterly accounting of all financial transactions made [under] **pursuant to** this section, or the resident's guardian or conservator or the person or persons listed in nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds are available after the department's claim, the remaining provisions of this section shall apply to the balance, unless the funds belonged to a person other than the resident, in which case the funds shall be paid to that person;

(8) Upon the death of a resident who has not been a recipient of aid, assistance, care, services, or who has not had moneys expended on his **or her** behalf by the department of health and senior services or the department has not made a claim on the funds, provide the fiduciary of resident's estate, at the fiduciary's request, a complete account of all the resident's personal funds and possessions and deliver to the fiduciary all possessions of the resident and the balance of the resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such funds or possessions, the operator shall notify the department that the funds remain unclaimed. Such unclaimed funds or possessions shall be disposed of as follows:

(a) If the unclaimed funds or possessions have a value totaling one hundred and fifty dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund to be used for the benefit of all residents of the facility by providing the residents social or educational activities. The facility shall keep an accounting of the acquisitions and expenditure

of these funds; or

(b) If the unclaimed funds or possessions have a value greater than one hundred and fifty dollars, the funds or possessions shall be immediately presumed to be abandoned property [under] **pursuant to** sections 447.500 to 447.585, RSMo, and the procedures provided for in those sections shall apply notwithstanding any other provisions of those sections which require a period greater than two years for a presumption of abandonment;

(9) Upon ceasing to be the operator of a facility, all funds and property held in trust pursuant to this section shall be transferred to the new operator in accordance with sound accounting principles, and a closeout report signed by both the outgoing operator and the successor operator shall be prepared. The closeout report shall include a list of current balances of all funds held for residents respectively and an inventory of all property held for residents respectively. If the outgoing operator refuses to sign the closeout report, he **or she** shall state in writing the specific reasons for his **or her** failure to so sign, and the successor operator shall complete the report and attach an affidavit stating that the information contained therein is true to the best of his **or her** knowledge and belief. Such report shall be retained with all other records and accounts required to be maintained [under] **pursuant to** this section;

(10) Not be required to invest any funds received from or on behalf of a resident, nor to increase the principal of any such funds.

2. Any owner, operator, manager, employee, or affiliate of an owner or operator who receives any personal property or anything else of value from a resident, shall, if the thing received has a value of ten dollars or more, make a written statement giving the date it was received, from whom it was received, and its estimated value. Statements required to be made pursuant to this subsection shall be retained by the operator and shall be made available for inspection by the department, or by the department of mental health when the resident has been placed by that department, and by the resident, and [his] **the resident's** designee or legal guardian. Any person who fails to make a statement required by this subsection is guilty of a class C misdemeanor.

3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in one calendar year receive any personal property or anything else of value from the residents of any facility which have a total estimated value in excess of one hundred dollars.

4. Subsections 2 and 3 of this section shall not apply if the property or other thing of value is held in trust in accordance with subsection 1 of this section, is received in payment for services rendered or pursuant to the terms of a lawful contract, or is received from a resident who is related to the recipient within the fourth degree of consanguinity or affinity.

5. Any operator who fails to maintain records or who fails to maintain any resident's personal funds in an account separate from the facility's funds as required by this section shall be guilty of a class C misdemeanor.

6. Any operator, or any affiliate or employee of an operator, who puts to his **or her** own use or the use of the facility or otherwise diverts from the resident's use any personal funds of the resident shall be guilty of a class A misdemeanor.

7. Any person having reasonable cause to believe that a misappropriation of a resident's funds or property has occurred may report such information to the department.

8. For each report the department shall attempt to obtain the name and address of the facility, the name of the facility employee, the name of the resident, information regarding the nature of the misappropriation, the name of the complainant, and any other information which might be helpful in an investigation.

9. Upon receipt of a report, the department shall initiate an investigation.

10. If the investigation indicates probable misappropriation of property or funds of a resident, the investigator shall refer the complaint together with [his] **the investigator's** report to the department director or [his] **the director's** designee for appropriate action.

11. Reports shall be confidential, as provided [under section 660.320] **pursuant to section 187.087**, RSMo.

12. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

13. Within five working days after a report required to be made [under] **pursuant to** this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

14. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because [he] **the resident or employee** or any member of his **or her** family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which he **or she** has reasonable cause to believe has been committed or has occurred.

15. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section [660.315] **187.080**, RSMo, to have misappropriated any property or funds of a resident while employed in any facility.

198.526. 1. The department shall inspect all facilities licensed by the department [at least twice each year]. Such inspections shall be conducted:

(1) Without the prior notification of the facility; and

(2) At times of the day, on dates and at intervals which do not permit facilities to anticipate such inspections.

2. The department shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

3. Information regarding unannounced inspections shall be disclosed to employees of the department on a need-to-know basis only. Any employee of the department who knowingly discloses the time of an unannounced inspection in violation of this section is guilty of a class A misdemeanor and shall have his or her employment immediately terminated.

198.532. Complaints filed with the department against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to [section 198.070] **sections 187.020 to 187.028, RSMo**. The department shall provide the results of all investigations in accordance with section [660.320] **187.087**, RSMo. The department shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the department and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the department.

344.050. 1. The board may refuse to issue or renew any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his **or her** right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his **or her** certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, pursuant to criminal prosecution **[under] pursuant to** the laws of any state

or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated [under] **pursuant to** this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license, or allowing any person to use his **or her** certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged incapacitated or disabled by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice [under] **pursuant to** this chapter;

(11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(13) Knowingly failing to report abuse or neglect of a resident in a long-term care facility, as required by section **[198.070] 187.020**, RSMo, of which he has actual knowledge that it is abuse or neglect.

3. The administrative hearing commission shall have no authority to require issuance of a license, pending a final determination by the commission, in any case in which an applicant is seeking initial licensure.

4. No license may be suspended or revoked and no application for renewal of a license may be denied [under] **pursuant to** this section until the licensee has been afforded an

opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

5. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, place upon probation, suspend or revoke a certificate of registration or authority, permit or license.

565.200. 1. Any owner or employee of a skilled nursing facility, as defined in section 198.006, RSMo, or an Alzheimer's special unit or program, as defined in section 198.505, RSMo, who:

(1) Has sexual contact, as defined in section 566.010, RSMo, with a resident is guilty of a class B misdemeanor. Any person who commits a second or subsequent violation of this subdivision is guilty of a class A misdemeanor; or

(2) Has sexual intercourse or deviant sexual intercourse, as defined in section 566.010, RSMo, with a resident is guilty of a class D felony. Any person who commits a second or subsequent violation of this subdivision is guilty of a class C felony.

2. The provisions of this section shall not apply to an owner or employee of a skilled nursing facility or Alzheimer's special unit or program who engages in sexual conduct, as defined in section 566.010, RSMo, with a resident to whom the owner or employee is married.

660.030. 1. With the exception of attorney and client privilege and the constitutional right against self-incrimination, no legally recognized privilege shall exempt a person from the reporting requirements of sections 187.020, 187.050 and 187.080 to 187.087, RSMo, and sections 660.250 to 660.295, or permit a person to refuse to cooperate fully with or refuse access to records by the department in any of its investigations or activities initiated pursuant to sections 187.020, 187.050 and 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person to refuse to give or receive evidence in any judicial proceeding relating to the likelihood of harm to an eligible adult, as defined in section 660.250.

2. Notwithstanding any other provision of law to the contrary, in any action brought by the department pursuant to any chapter relating to the care and protection of an eligible adult, the department and any of its personnel shall have access to all financial, medical and mental health records of any such eligible adult regardless of the institution, facility or entity in possession of such records.

660.050. 1. The "Department" is hereby transferred from the department of health and senior services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974. The department shall aid and assist the elderly and low-income [handicapped] **disabled adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The department shall**

regulate adult long-term care facilities pursuant to the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

2. In addition to its duties and responsibilities enumerated pursuant to other provisions of law, the department shall:

(1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. 3001, et seq.), as amended;

(2) Assure that an information and referral system is developed and operated for the elderly, including information on the Missouri care options program;

(3) Provide technical assistance, planning and training to local area agencies on aging;

(4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

(5) Serve as liaison between the department of health and senior services and the Federal Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United States Department of Health and Human Services;

(6) Conduct medical review (inspections of care) activities such as utilization reviews, independent professional reviews, and periodic medical reviews to determine medical and social needs for the purpose of eligibility for Title XIX, and for level of care determination;

(7) Certify long-term care facilities for participation in the Title XIX program;

(8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for Supplemental Security Income recipients in long-term care facilities and serve as the liaison between the Social Security Administration and the department of health and senior services concerning Supplemental Security Income beneficiaries;

(9) Review plans of proposed long-term care facilities before they are constructed to determine if they meet applicable state and federal construction standards;

(10) Provide consultation to long-term care facilities in all areas governed by state and federal regulations;

(11) Serve as the central state agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for elderly persons in Missouri consistent with the provisions of subsection 1 of this section and serve as the designated state unit on aging, as defined in the Older Americans Act of 1965;

(12) With the advice of the governor's advisory council on aging, develop long-range state plans for programs, services, and activities for elderly and [handicapped] **disabled** persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

(13) Receive and disburse all federal and state funds allocated to the department and

solicit, accept, and administer grants, including federal grants, or gifts made to the department or to the state for the benefit of elderly persons in this state;

(14) Serve, within government and in the state at large, as an advocate for elderly persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied;

(15) Provide information and technical assistance to the governor's advisory council on aging and keep the council continually informed of the activities of the department;

(16) After consultation with the governor's advisory council on aging, make recommendations for legislative action to the governor and to the general assembly;

(17) Conduct research and other appropriate activities to determine the needs of elderly persons in this state, including, but not limited to, their needs for social and health services, and to determine what ~~existing~~ services and facilities, private and public, are available to elderly persons to meet those needs;

(18) Maintain and serve as a clearinghouse for up-to-date information and technical assistance related to the needs and interests of elderly persons and persons with Alzheimer's disease or related dementias, including information on the Missouri care options program, dementia-specific training materials and dementia-specific trainers. Such dementia-specific information and technical assistance shall be maintained and provided in consultation with agencies, organizations and/or institutions of higher learning with expertise in dementia care;

(19) Provide area agencies on aging with assistance in applying for federal, state, and private grants and identifying new funding sources;

(20) Determine area agencies on aging annual allocations for Title XX and Title III of the Older Americans Act expenditures;

(21) Provide transportation services, home-delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income ~~handicapped~~ **disabled** adults as designated in the Social Services Block Grant Report, through contract with other agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the department;

(22) Monitor the process pursuant to the federal Patient Self-determination Act, 42 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients concerning durable powers of attorney and living wills.

3. The department director, subject to the supervision of the director of the department of health and senior services, shall be the chief administrative officer of the department and shall exercise for the department the powers and duties of an appointing authority pursuant to chapter 36, RSMo, to employ such administrative, technical and other personnel as may be necessary for

the performance of the duties and responsibilities of the department.

4. The department may withdraw designation of an area agency on aging only when it can be shown the federal or state laws or rules have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or the elderly are not receiving appropriate services within available resources, and after consultation with the director of the area agency on aging and the area agency board. Withdrawal of any particular program of services may be appealed to the director of the department of health and senior services and the governor. In the event that the department withdraws the area agency on aging designation in accordance with the Older Americans Act, the department shall administer the services to clients previously performed by the area agency on aging until a new area agency on aging is designated.

5. Any person hired by the department of health and senior services after August 13, 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection process and applicable rules and statutes during the first six months of employment. Any such person shall annually, on the anniversary date of employment, present to the department evidence of having completed at least twenty hours of continuing education in at least two of the following categories: communication techniques, skills development, resident care, or policy update. The department of health and senior services shall by rule describe the curriculum and structure of such continuing education.

6. The department may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in this section and sections **[198.070 and] 187.020 to 187.034, 187.050 and 187.080 to 187.087, RSMo, section** 198.090, RSMo, and sections 660.250 [**and** 660.300 to 660.320]. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created **[under]** **pursuant to** the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

7. Missouri care options is a program, operated and coordinated by the department, which informs individuals of the variety of care options available to them when they may need long-term care.

8. The department shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by skilled nursing facilities, intermediate care

facilities, residential care facilities, agencies providing in-home care services authorized by the department, adult day-care programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the department. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The department of health and senior services shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

- (1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;
- (2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia-specific training.

660.051. The department shall provide through their Internet web site:

(1) The most recent survey of every long-term care facility licensed in this state. If such survey is in dispute, the survey shall not be posted on the web site until the facility's response has been reviewed and considered for summary publication by the department;

(2) A link to the federal web site that provides a summary of facility surveys conducted over the last three years; and

(3) Information on how to obtain a copy of a complete facility survey conducted over the last three years.

660.083. Pursuant to chapter 198, RSMo, when the department of health and senior services issues a license for or renews the existing license of a facility, as defined in section 198.006, RSMo, the department shall consider the compliance history of a facility and of the facility's operator. Any facility responses to survey findings shall be included and considered in the official review made by the department.

660.252. All Medicaid participation agreements entered into between the

department of health and senior services and in-home service provider agencies shall include, as part of the initial aide training requirement, training on abuse and neglect identification, prevention and reporting, which shall be successfully completed prior to unsupervised contact with clients. If the provider agency serves patients with Alzheimer's disease or related dementia, the agency shall include as part of the initial aide requirement training on care of Alzheimer's patients. The department shall describe by rule the curriculum for the training.

660.401. 1. The department shall restructure the adult day care program requirements to allow for programs that provide a basic level of care without the rehabilitative services provided by a licensed professional therapist.

2. The department shall authorize additional reimbursement to providers for the transportation of clients to and from their homes for adult day care programs.

3. To increase the participation of long-term care facilities in the adult day care program, the department shall amend the rules and regulations regarding adult day care programs with existing long-term care facilities. The changes shall eliminate the duplication of program requirements while continuing to ensure the care level and appropriate direct care staffing for the protection of nursing home residents and adult day care clients.

Section 1. All existing developments authorized by section 198.531, RSMo, shall be exempt from the provisions of sections 197.300 to 197.367, RSMo.

[198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, facility administrator, employee in a facility, or employee of the department of health and senior services or of the department of mental health, coroner, dentist, hospital and clinic personnel engaged in examination, other health practitioners, mental health professional, adult day care worker, probation or parole officer, law enforcement official or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

2. The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to those persons required to report pursuant to subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or neglected may report such information to the department.

5. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated. As provided in section 565.186, RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.

6. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with the investigator's report to the department director or the director's designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

8. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted in bad faith or with malicious purpose. It is a crime pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or neglect.

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

10. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because such resident or employee or any member of such resident's or employee's family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which the resident, the resident's family or an employee has reasonable cause to believe has been committed or has occurred. Through the existing department information and referral telephone contact line, residents, their families and employees of a facility shall

be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.

11. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 660.315, RSMo, to have recklessly, knowingly or purposely abused or neglected a resident while employed in any facility.

13. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot- line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.]

[565.186. The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly report the incident to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo.]

[565.188. 1. When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic personnel engaged in examination, care or treatment of persons, or other health practitioners, psychologists, mental health professional, social worker, adult day care center worker, nursing home worker, probation or parole officer, Christian Science practitioner, peace officer or law enforcement official, or other person with responsibility for the care of a person sixty years of age or older has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances which would reasonably result in abuse or neglect, he shall immediately report or cause a report to be made to the department in accordance with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

2. Any person who knowingly fails to make a report as required in subsection 1 of this section is guilty of a class A misdemeanor.

3. Any person who purposely files a false report of elder abuse or neglect shall be guilty of a class A misdemeanor.

4. Every person who has been previously convicted of or pled guilty to making a false report to the department and who is subsequently convicted of making a false report under subsection 3 of this section is guilty of a class D felony.

5. Evidence of prior convictions of false reporting shall be heard by the court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.]

[565.190. Any person, official or institution complying with the provisions of section 565.188 in the making of a report, or in cooperating with the department in any of its activities pursuant to sections 565.186 and 565.188, except any person, official or institution violating section 565.180, 565.182 or 565.184, shall be immune from any civil or criminal liability for making such a report, or in cooperating with the department, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.]

[660.058. 1. The department shall provide budget allotment tables to each area agency on aging by January first of each year. Each area agency on aging shall submit its area plan, area budget and service contracts to the department by March first of each year. Each April, the area agencies on aging shall present their plans to the department in a public hearing scheduled by the department and held in the area served by the area agency on aging. Within thirty days of such hearing, the department shall report findings and recommendations to the board of directors for the area agency on aging, the area agency on aging advisory council, the members of the senate budget committee and the members of the house appropriations committee for social services and corrections.

2. Each area agency on aging shall include in its area plan performance measures and outcomes to be achieved for each year covered by the plan. Such measures and outcomes shall also be presented to the department during the public hearing.

3. The department shall conduct on-site monitoring of each area agency on aging at least once a year. The department shall send all monitoring reports to the area agency on aging advisory council and the board of directors for the area agency which is the subject of the reports.]

[660.305. 1. Any person having reasonable cause to believe that a misappropriation of an in-home services client's property or funds, or the falsification of any documents verifying service delivery to the in-home services client has occurred, may report such information to the department.

2. For each report the department shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee who puts to his own use or the use of the in-home services provider agency or otherwise diverts from the in-home services client's use any personal property or funds of the in-home services client, or falsifies any documents for service delivery, shall be guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall initiate an investigation.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of an in-home services client, the investigator shall refer the complaint together with his report to the department director or his designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320.

7. Anyone, except any person participating in or benefitting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

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

9. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department to, pursuant to section 660.315, have misappropriated any property or funds, or falsified any documents for service delivery of an in-home services client while employed by an in-home services provider agency.]

[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 last known address that:

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

(2) His 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) His 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 his designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, he 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 applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without notice by the department, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefor.

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

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

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

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and

circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of health and senior services or one of its departments.

9. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or his designee, based upon the following:

(1) Whether the person acted recklessly, knowingly or purposely, as defined in chapter 562, RSMo;

(2) The degree of the infliction of physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances; and

(6) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department's requirements.

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

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

(1) Is licensed as an operator under chapter 198, RSMo;

(2) Provides in-home services under contract with the department;

(3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is approved by the department to issue certificates for nursing assistants training; or

(5) Is an entity licensed under chapter 197, RSMo. The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.

12. No person, corporation or association who received the employee

disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any person who has been listed on the employee disqualification list may request that the director remove his name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make ~~conditional~~ the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.]

[660.317. 1. For the purposes of this section, the term "provider" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; or
- (4) Is an entity licensed pursuant to chapter 197, RSMo;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.

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

3. Beginning August 28, 1997, not later than two working days of hiring any person for a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through an employment agency, the employment agency shall prior to sending a temporary employee to a provider:

- (1) Request a criminal background check as provided in section 43.540, RSMo. Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct

employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence; and

(2) Make an inquiry to the department of health and senior services, whether the person is listed on the employee disqualification list as provided in section 660.315.

4. When the provider requests a criminal background check pursuant to section 43.530, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check.

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

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

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

(3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315.

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

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

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

9. The department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.]

[660.320. Reports confidential under section 198.070, RSMo, and sections 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

- (1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his name;
- (2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;
- (3) Release of a name is required for conformance with a lawful subpoena;
- (4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;
- (5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or
- (6) Release of a name is requested by the department of family services for the purpose of licensure under chapter 210, RSMo.]

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