

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 556 & 311
92ND GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, March 12, 2003, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0569S.26C

AN ACT

To repeal sections 198.006, 198.022, 198.032, 198.036, 198.067, 198.070, 198.082, 198.105, 198.525, 198.526, 198.532, 208.072, 208.159, 344.050, 565.186, 570.145, 630.140, 630.165, 630.167, 660.250, 660.261, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, and to enact in lieu thereof thirty-nine new sections relating to the protection of the elderly, with penalty provisions and an expiration date for a certain section.

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

Section A. Sections 198.006, 198.022, 198.032, 198.036, 198.067, 198.070, 198.082, 198.105, 198.525, 198.526, 198.532, 208.072, 208.159, 344.050, 565.186, 570.145, 630.140, 630.165, 630.167, 660.250, 660.261, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, are repealed and thirty-nine new sections enacted in lieu thereof, to be known as sections 197.416, 197.478, 197.500, 198.006, 198.022, 198.027, 198.030, 198.032, 198.036, 198.066, 198.067, 198.070, 198.071, 198.082, 198.301, 198.525, 198.526, 198.528, 198.532, 208.072, 208.159, 344.050, 565.186, 570.145, 630.140, 630.165, 630.167, 660.250, 660.261, 660.264, 660.270, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, and 660.321, to read as follows:

197.416. Whenever the department is inspecting a home health agency in response to an application from an applicant located outside of Missouri not previously licensed by the department, the department may request from the applicant the past five years compliance history of all home health agencies owned by the applicant located outside of this state.

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

197.478. The department of health and senior services shall provide through their Internet web site:

(1) The most recent survey of all home health agencies and any such findings of deficiencies and the effect the deficiency would have on such agencies. If such survey is in dispute, the survey shall not be posted on the web site until the agency's dispute has been resolved and the department shall, upon request of the home health agency, post the agency's response;

(2) The home health agency's proposed plan of correction;

(3) A link to the federal web site that provides a summary of home health agency surveys conducted over the last three years; and

(4) Information on how to obtain a copy of a complete home health agency survey conducted over the last three years.

197.500. 1. The department shall maintain an employee disqualification list and place on the employee disqualification list the names of any persons who are or who have been employed by any entity licensed pursuant to this chapter and who have been finally determined by the department pursuant to section 660.315, RSMo, to have knowingly or recklessly abused or neglected a patient. For the purpose of this section, "abuse" and "neglect" shall have the same definitions as those specified pursuant to section 198.006. For purposes of this section only, "knowingly" and "recklessly" shall have the terms that are prescribed to them in this section. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

2. The department shall compile and maintain an employee disqualification list in the same manner as the employee disqualification list compiled and maintained by the department pursuant to section 660.315, RSMo.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

(1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;

(2) "Administrator", the person who is in general administrative charge of a facility;

(3) "Affiliate":

(a) With respect to a partnership, each partner thereof;

(b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

(c) With respect to a corporation, each person who owns, holds or has the power to vote, five percent or more of any class of securities issued by the corporation, and each officer and director;

(d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

(4) "Department", the Missouri department of [social services] **health and senior services**;

(5) "Emergency", a situation, physical condition or one or more practices, methods or operations which presents imminent danger of death or serious physical or mental harm to residents of a facility;

(6) "Facility", any residential care facility I, residential care facility II, immediate care facility, or skilled nursing facility;

(7) "Health care provider", any person providing health care services or goods to residents and who receives funds in payment for such goods or services under Medicaid;

(8) "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;

(9) "Manager", any person other than the administrator of a facility who contracts or otherwise agrees with an owner or operator to supervise the general operation of a facility, providing such services as hiring and training personnel, purchasing supplies, keeping financial records, and making reports;

(10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42 U.S.C. 301 et seq.), as amended;

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

(12) "Operator", any person licensed or required to be licensed under the provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

(13) "Owner", any person who owns an interest of five percent or more in:

(a) The land on which any facility is located;

(b) The structure or structures in which any facility is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or

(d) Any lease or sublease of the land or structure in or on which a facility is located.

"Owner" does not include a holder of a debenture or bond purchased at public issue nor does it include any regulated lender unless the entity or person directly or through a subsidiary operates a facility;

(14) "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;

(15) "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;

(16) "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;

(17) "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;

(18) "Vendor", any person selling goods or services to a health care provider.

198.022. 1. Upon receipt of an application for a license to operate a facility, the

department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

- (1) The statements in the application are true and correct;
 - (2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;
 - (3) The applicant has the financial capacity to operate the facility;
 - (4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;
 - (5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory;
 - (6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;
 - (7) All fees due to the state have been paid.
2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.
 3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. **Copies of any records requested by the department shall be prepared by the staff of such facility within two working days or as determined by the department. The department shall not remove or disassemble any medical record during any inspection of the facility, but may observe the photocopying or may make their own copies in the event the facility does not have the technology to make the copies. In accordance with the provisions of section 198.525,** the department shall make at least two inspections per year, at least one of which shall be unannounced to the operator. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.
 4. Whenever the department has reasonable grounds to believe that a facility required to be licensed under sections 198.003 to 198.096 is operating without a license, and the

department is not permitted access to inspect the facility, or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

5. Whenever the department is inspecting a facility in response to an application from an operator located outside of Missouri not previously licensed by the department, the department may request from the applicant the past five years compliance history of all facilities owned by the applicant located outside of this state.

198.027. If a facility submits satisfactory documentation that establishes correction of any deficiency contained within the written report of deficiency required by section 198.026, an on-site revisit of such deficiency may not be required.

198.030. Every residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility shall post the most recent inspection report in a conspicuous place. If the operator determines that the inspection report contains individually identifiable health information, the operator may redact such information prior to posting the inspection report.

198.032. 1. Nothing contained in 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 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, 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 **and maintain a hot-line caller log for the reporting of suspected abuse and neglect in long-term care facilities.** 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. **The department shall in all cases, attempt to obtain the name of any person making a report after obtaining relevant information regarding the alleged abuse or neglect. The department shall also attempt to obtain the address of any person making a report. The identity of the person making the report shall remain confidential.**

[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.]

198.036. 1. The department may revoke a license in any case in which it finds that [the operator]:

(1) **The operator** failed or refused to comply with class I or II standards, as established by the department pursuant to section 198.085; or failed or refused to comply with class III standards as established by the department pursuant to section 198.085, where the aggregate effect of such noncompliances presents 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;

(2) **The operator** refused to allow representatives of the department to inspect the facility for compliance with standards **or refused to allow representatives of the department access to residents and employees necessary to carry out the duties set forth in this chapter and rules promulgated thereunder;**

(3) **The operator** knowingly acted or knowingly omitted any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident; [or]

(4) **The operator** demonstrated financial incapacity to operate and conduct the facility in accordance with the provisions of sections 198.003 to 198.096[.];

(5) **The operator or any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare, or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be**

under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory; or

(6) The operator or any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care.

2. Nothing in subdivision (2) of subsection 1 of this section shall be construed to allow the department to access information not necessary to carry out the duties set forth in sections 198.006 to 198.186.

3. Upon revocation of a license, the director of the department shall so notify the operator in writing, setting forth the reason and grounds for the revocation. Notice of such revocation shall be sent either by certified mail, return receipt requested, to the operator at the address of the facility, or served personally upon the operator. The department shall provide the operator notice of such revocation at least ten days prior to its effective date.

198.066. To encourage compliance with the provisions of this chapter and any rules and regulations, the department of health and senior services shall impose sanctions commensurate with the seriousness of the violation found to have occurred. For class I, II, or III violations, the following remedies may be imposed:

- (1) Plan of correction;
- (2) Additional directed staff training;
- (3) State monitoring;
- (4) Directed plan of correction;
- (5) Denial of payment for new Medicaid admissions;
- (6) Probationary license and consent agreement as described in section 198.026;
- (7) Recover civil monetary penalties pursuant to section 198.067;
- (8) Denial of payment for all new admissions;
- (9) Receivership pursuant to section 198.105; or
- (10) License revocation.

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 than fifteen days after the filing of the action.

2. The department 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] twenty-five** 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 **[division of aging] department of health and senior services** finds them to have been corrected. **When applicable**, the amount of the penalty shall be determined as follows:

(1) For each violation of a class I standard **when applicable pursuant to subdivision (6) of this section**, not less than one **[hundred fifty] thousand** dollars nor more than **[one] ten** thousand dollars;

(2) For each violation of a class II standard, not less than **two hundred** fifty dollars nor more than **[five hundred] one thousand** dollars;

(3) For each violation of a class III standard, not less than **[fifteen dollars] fifty dollars** nor more than **[one] two** 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 **at a particular facility** which has been cited **previously** within the past twenty-four months and for each specific class II or III violation by the same operator **at a particular facility** which has been cited **previously** within the past twelve months, double the amount last imposed;

(6) **In accordance with the provisions of this section, when the department imposes a civil monetary penalty for a class I violation, the liability for the civil monetary penalty shall be incurred immediately upon the imposition of the violation regardless of any subsequent correction of the violation by the facility. For class II and III violations the department shall impose a civil monetary penalty if a breach of a specific state or federal standard or statute 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.**

[As used in this subdivision 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. **Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the [division of aging] elderly home-delivered meals trust fund as established in section 660.078, RSMo. Twenty-five percent of the penalties collected pursuant to this section shall be deposited in the nursing facility quality care fund to be used for the sole purpose of supporting quality care improvement projects within the office of state ombudsman for long-term care facility residents, established pursuant to section 660.603, RSMo. The remaining fifty percent of the penalties collected pursuant to this section shall be deposited into the nursing facility quality care fund established in section 198.418 to be used by the department for the sole purpose of developing a program to assist qualified nursing facilities to improve the quality of service to their residents. The director of the department shall, by rule, develop a definition of qualified facilities and shall establish procedures for the selection of qualified facilities.** 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 for which the state action is brought.

10. In addition to the civil penalties specified in subdivision (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 subdivision (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.

11. The department shall not impose a fine for self-reporting class II and class III violations so long as each violation is corrected within a specified period of time as determined by the department and there is no reoccurrence of the particular violation for twelve months following the date of the first self-reporting.

12. If a facility is sold or changes its operator, any civil penalty assessed shall not be sold, transferred, or otherwise assigned to the successor operator but shall remain the sole liability of the operator at the time of the violation.

198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, **medical resident, intern, nurse practitioner, physician's assistant, nurse, hospital and clinic personnel engaged in examination, care, or treatment of persons,** 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 social services [or of the], department of mental health, **or the department of health and senior services,** 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 the penalties prescribed pursuant to this section, any administrator who knowingly conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in section 565.002, RSMo, shall be guilty of a class D felony.

5. 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.] 6. 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 **unless such person is the alleged perpetrator of the abuse or neglect.** 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.] 7. 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.] 8. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

[8.] 9. Anyone, **except any person who has abused or neglected a resident in a facility,** 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. 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.] 10. 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.] 11. 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 [division of aging] **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.] 12. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of a class D felony.

[12.] 13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons **who are or who have been employed in any facility and 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] **knowingly or recklessly abused or neglected a resident. For purposes of this subsection only, "knowingly" and "recklessly" shall have the terms that are prescribed to them in this subsection. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.**

[13.] 14. 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.

198.071. The staff of a residential care facility I, a residential care facility II, an intermediate care facility, or a skilled nursing facility, shall attempt to contact the resident's immediate family or a resident's responsible party and shall contact the attending physician and shall notify the local coroner or medical examiner immediately upon the death of any resident of the facility prior to transferring the deceased resident to a funeral home.

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 **and such program shall be completed within four months of employment.** Training programs shall be offered at [a location] **any facility licensed or approved by the department of health and senior services which is** most reasonably accessible to the enrollees in each class. The program may be established 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.

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 four months of employment and** may consist of normal employment as nurse assistants 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.

198.105. 1. Any petition for appointment of a receiver shall be verified and shall be accompanied by an affidavit or affidavits setting forth material facts showing there exists one or more of the conditions specified in section 198.099. The petition shall be filed in the circuit court of Cole County or in the county where the facility is located. If the petition is not filed by the

attorney general, a copy of the petition shall be served upon the department and upon the attorney general. The court shall hold a hearing on the petition within five days of the filing of the petition and determine the matter within fifteen days of the initial hearing. The petition and notice of the hearing shall be served on the operator or administrator of the facility or, if personal service is impossible, shall be posted in a conspicuous place in the facility not later than three days before the time specified for the hearing, unless a different period is fixed by order of the court.

2. The court shall appoint [the director of the department or his designee, or any person determined by the court to be qualified,] **a person, selected in accordance with the provisions of this subsection and the rules promulgated pursuant to this section,** to act as receiver if it finds that any ground exists which would authorize the appointment of a receiver under section 198.099 and that appointment of a receiver will contribute to the continuity of care or the orderly and safe transfer of residents in the facility. **The department shall, within six months of the effective date of this act, promulgate rules or regulations to establish guidelines for the determination of qualified receivers, procedures for maintaining the list of qualified receivers that requested in writing to act as a receiver, and the selection or removal of such receivers. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under 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, 2003, shall be invalid and void.**

3. The director of the department shall maintain a list of persons who have submitted a written request in accordance with the provisions of this subsection and the rules promulgated by the department to act as receiver pursuant to section 198.099. When a petition is filed seeking the appointment of a receiver, the director of the department shall select the first name on the list. The director of the department shall inform this person of his or her selection, of the name of the facility, and the grounds for seeking receivership of such facility. This person may elect not to be appointed, in which case the director of the department shall choose the next consecutive name on the list, continuing until a person has agreed to serve as the receiver. The director shall provide the name to the judge of the court wherein the petition for receivership shall have been filed. For each additional petition filed seeking the appointment of a receiver, names shall be chosen from the list in

consecutive order beginning with the next name that follows the last name chosen. Should none of the persons on the list agree to serve as the receiver, the court shall appoint a person determined by the court to be qualified to act as receiver.

198.301. No employee of a nursing home district 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.

198.525. **Except as otherwise provided pursuant to section 198.526**, in order to comply with sections 198.012 and 198.022, the department of health and senior services shall inspect **residential care facilities I**, residential care facilities II, intermediate care facilities, and skilled nursing, **including those** facilities attached to acute care hospitals at least twice a year.

198.526. 1. [The division of aging] **Except as provided pursuant to subsection 3 of this section, the department of health and senior services** shall inspect all facilities licensed by the [division] **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 [division] **department** shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

3. **The department may reduce the frequency of inspections to once a year provided that a facility is found to be in substantial compliance. The basis for such determination shall include, but not be limited to, the following:**

- (1) Previous inspection reports;
- (2) The facility's history of compliance with rules and regulations promulgated pursuant to this chapter;
- (3) The number and severity of complaints received about the facility; and
- (4) In the year subsequent to a finding of no class I violations or class II violations, the facility does not have a change in ownership, operator, or director of nursing.

4. 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.

198.528. The department of health and senior services shall provide through their Internet web site:

(1) The most recent survey of every long-term care facility licensed in this state and any such findings of deficiencies and the effect the deficiency would have on such facility. If such survey is in dispute, the survey shall not be posted on the web site until the facility's informal dispute resolution process has been resolved and the department shall, upon request of the facility, post the facility's response;

(2) The facility's proposed plan of correction;

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

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

198.532. 1. Complaints filed with the [division of aging] **department of health and senior services** 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.

2. The [division] **department** shall provide the results of all investigations in accordance with section 660.320, RSMo. The [division] **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 [division of aging] **department of health and senior services** 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 [division of aging] **department of health and senior services**.

208.072. 1. A completed application for medical assistance for services described in section 208.152 shall be approved or denied within thirty days from submission to the division of family services or its successor. **In the event the division of family services is unable to make a determination regarding Medicaid eligibility within sixty days of the**

submission of a completed application for medical assistance for nursing facility services, the patient shall be Medicaid eligible until the application is approved or denied. However, in no event shall benefits be construed to commence prior to the date of application.

2. The division of medical services shall remit to a licensed nursing home operator the Medicaid payment for a newly admitted Medicaid resident in a licensed long-term care facility within forty-five days of the resident's date of admission.

208.159. 1. Notwithstanding the provisions of sections 207.010, RSMo, 208.152, and 208.153, the department of social services shall administer payments for nursing home services authorized in sections 208.151, et seq., which govern medical assistance under Title XIX, Public Law 89-97, 1965 amendments to the Federal Social Security Act (42 U.S.C. 301 et seq.), as amended, and shall administer vendor payments for the aged and direct adult services for the aged under Title XX, Public Law 93-647, 1974 amendments to the Federal Social Security Act (42 U.S.C. 1397 et seq.), as amended. The department shall, pursuant to chapter 536, RSMo, promulgate rules and regulations for the purpose of administering such payments, including rules to define the reasonable costs, manner, extent, quality, charges and fees or payments for nursing home services.

2. To affect expenditures, quality of, provider equity in and access to Medicaid nursing home services, the patient care expenditure component of the nursing facility Medicaid per diem rate shall include salaries for physical therapy, occupational therapy, speech therapy, and inhalation therapy, and supplies and contracted services for physical therapy, occupational therapy, speech therapy, and inhalation therapy in addition to those expenditures recognized in the code of state regulations promulgated by the division of medical services within the department of social services. The additional expenditures listed in this subsection to the current patient care expenditure component shall be effective upon appropriation of moneys for rebasing the nursing facility Medicaid per diem rates. Subject to appropriations, nothing in this subsection shall be construed to prohibit the rulemaking authority of the department of social services regarding the nursing home reimbursement formula. The provisions of this subsection shall expire August 28, 2008.

3. If information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's prospective rate may be retroactively and prospectively reduced if the fraudulent, misrepresented or inaccurate information as originally reported resulted in the establishment of a higher prospective rate than the facility would have received in the absence of such information. The division of medical services may audit nursing facility cost reports and adjust costs accordingly so that they are consistent with those costs that reflect a normal recurring level of

costs expected to be incurred annually by the facility on an on-going basis.

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, 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.

565.186. The department of ~~[social services]~~ **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. **In the event the department is not able to substantiate whether abuse occurred due to the failure of the operator or any of the operator's agents or employees to cooperate with the investigation, the incident shall be promptly reported to appropriate law enforcement agencies.**

570.145. 1. A person ~~[is guilty of the offense]~~ **commits the crime** of financial exploitation of an elderly or disabled person if such person ~~[stands in a position of trust and confidence with the elderly or disabled person, and such person]~~ knowingly and by deception ~~[or]~~, **intimidation, or force** obtains control over the elderly or disabled person's property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby benefiting such person or detrimentally affecting the elderly or disabled person. Financial exploitation of an elderly or disabled person is a class A misdemeanor

if the value of the property is less than [two hundred] fifty dollars [and], a class [C] **D** felony if the value of the property is [two hundred fifty dollars or more] **greater than fifty dollars but less than five hundred dollars, a class C felony if the value of the property is greater than five hundred dollars but less than one thousand dollars, and a class B felony if the value of the property is one thousand dollars or more.**

2. For purposes of this section, the following terms mean:

(1) "Deception", a misrepresentation or concealment of material fact relating to the terms of a contract or agreement entered into with the elderly or disabled person or to the existing or preexisting condition of any of the property involved in such contract or agreement, or the use or employment of any misrepresentation, false pretense or false promise in order to induce, encourage or solicit the elderly or disabled person to enter into a contract or agreement. Deception includes:

(a) Creating or confirming another person's impression which is false and which the offender does not believe to be true; or

(b) Failure to correct a false impression which the offender previously has created or confirmed; or

(c) Preventing another person from acquiring information pertinent to the disposition of the property involved; or

(d) Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promising performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not sufficient evidence to prove that the offender did not intend to perform;

(2) "Disabled person", a person who suffers from a physical or mental impairment resulting from disease, injury, functional disorder or congenital condition which renders such person incapable of avoiding or preventing the commission of an offense;

(3) "Elderly person", a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense;

(4) "Intimidation", the communication to an elderly or disabled person that he or she will be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

3. [For purposes of this section, a person stands in a position of trust and confidence with an elderly or disabled person when such person:

(1) Is a parent, spouse, adult child or other relative by blood or marriage of the elderly or disabled person;

(2) Is a joint tenant or tenant in common with the elderly or disabled person with knowledge of such relationship;

(3) Has a legal or fiduciary relationship with the elderly or disabled person; or

(4) Has a relationship with the elderly or disabled person as a health care or personal care worker.

4.] Nothing in this section shall be construed to limit the remedies available to the victim pursuant to any state law relating to domestic violence.

[5.] 4. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to assist the elderly or disabled person in the management of his or her property, but through no fault of his or her own has been unable to provide such assistance.

[6.] 5. Nothing in this section shall limit the ability to engage in bona fide estate planning, to transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that such actions do not adversely impact the standard of living to which the elderly or disabled person has become accustomed at the time of such actions.

[7.] 6. It shall not be a defense to financial exploitation of an elderly or disabled person that the accused reasonably believed that the victim was not an elderly or disabled person.

630.140. 1. Information and records compiled, obtained, prepared or maintained by the residential facility, day program operated, funded or licensed by the department or otherwise, specialized service, or by any mental health facility or mental health program in which people may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to either voluntary or involuntary patients, residents or clients shall be confidential.

2. The facilities or programs shall disclose information and records including medication given, dosage levels, and individual ordering such medication to the following upon their request:

(1) The parent of a minor patient, resident or client;

(2) The guardian or other person having legal custody of the patient, resident or client;

(3) The attorney of a patient, resident or client who is a ward of the juvenile court, an alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as evidenced by court orders of the attorney's appointment;

(4) An attorney or personal physician as authorized by the patient, resident or client;

(5) Law enforcement officers and agencies, information about patients, residents or clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement officers shall be obligated to keep such information confidential;

(6) The entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042. The entity or agency shall be able to obtain access to the records of a person with developmental

disabilities who is a client of the entity or agency if such person has authorized the entity or agency to have such access; and the records of any person with developmental disabilities who, by reason of mental or physical condition is unable to authorize the entity or agency to have such access, if such person does not have a legal guardian, conservator or other legal representative, and a complaint has been received by the entity or agency with respect to such person or there is probable cause to believe that such person has been subject to abuse or neglect. The entity or agency obtaining access to a person's records shall meet all requirements for confidentiality as set out in this section;

(7) The entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to obtain access to the records of a patient, resident or client who by reason of mental or physical condition is unable to authorize the system to have such access, who does not have a legal guardian, conservator or other legal representative and with respect to whom a complaint has been received by the system or there is probable cause to believe that such individual has been subject to abuse or neglect. The entity or agency obtaining access to a person's records shall meet all requirements for confidentiality as set out in this section. The provisions of this subdivision shall apply to a person who has a significant mental illness or impairment as determined by a mental health professional qualified under the laws and regulations of the state;

(8) To mental health coordinators, but only to the extent necessary to carry out their duties under chapter 632, RSMo.

3. The facilities or services may disclose information and records under any of the following:

- (1) As authorized by the patient, resident or client;
- (2) To persons or agencies responsible for providing health care services to such patients, residents or clients;
- (3) To the extent necessary for a recipient to make a claim or for a claim to be made on behalf of a recipient for aid or insurance;
- (4) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations or similar studies; provided, that such personnel shall not identify, directly or indirectly, any individual patient, resident or client in any report of such research, audit or evaluation, or otherwise disclose patient, resident or client identities in any manner;
- (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;
- (6) To law enforcement officers or public health officers, but only to the extent necessary to carry out the responsibilities of their office, and all such law enforcement and public health officers shall be obligated to keep such information confidential;

(7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

(8) To the attorney representing petitioners, but only to the extent necessary to carry out their duties under chapter 632, RSMo;

(9) To the department of social services **or the department of health and senior services** as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents, or clients;

(10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986, but only to the extent necessary to carry out their statutory responsibilities. The county board shall not identify, directly or indirectly, any individual patient, resident or client.

4. The facility or program shall document the dates, nature, purposes and recipients of any records disclosed under this section and sections 630.145 and 630.150.

5. The records and files maintained in any court proceeding under chapter 632, RSMo, shall be confidential and available only to the patient, his attorney, guardian, or, in the case of a minor, to a parent or other person having legal custody of the patient, and to the petitioner and his attorney. In addition, the court may order the release or use of such records or files only upon good cause shown, and the court may impose such restrictions as the court deems appropriate.

6. Nothing contained in this chapter shall limit the rights of discovery in judicial or administrative procedures as otherwise provided for by statute or rule.

7. The fact of admission of a voluntary or involuntary patient to a mental health facility under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this section.

630.165. 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, nurse's aide or orderly in a residential facility, day program or specialized service operated, funded or licensed by the department or in a mental health facility or mental health program in which people may be admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo, or employee of the department has reasonable cause to believe that a patient, resident or client of a facility, program or service has been abused or neglected, he shall immediately report or cause a report to be made to the department or the department of health and senior services, if such facility or program is licensed pursuant to chapter 197, RSMo.

2. The report shall contain the name and address of the residential facility, day program or specialized service; the name of the patient, resident or client; 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 fails to do so within a reasonable time after the act of abuse or neglect is guilty of an infraction.

4. In addition to those persons required to report under 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. Any person who knowingly files a false report of abuse or neglect shall be guilty of a class A misdemeanor.

6. Any person having a prior conviction of filing false reports and who subsequently files a false report of abuse or neglect pursuant to this section or section 565.188, RSMo, is guilty of a class D felony.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under 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, 2003, shall be invalid and void.

630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors or the department of health and senior services, if such facility or program is licensed pursuant to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

2. If the investigation indicates possible abuse or neglect of a patient, resident or client, the investigator shall refer the complaint together with the investigator's report to the department director for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal from a facility not operated or funded by the department is necessary to protect the residents 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 residents 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.

3. (1) Reports referred to in section 630.165 and the investigative reports referred to in this section shall be confidential, shall not be deemed a public record, and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that: complete copies all such reports shall be open and available to the parents or other guardian of the patient, resident, or client who is the subject of such report, except that the names and any other descriptive information of the complainant or other person mentioned in the reports shall not be

disclosed unless such complainant or person specifically consents to such disclosure. All reports referred to in this section shall be admissible in any judicial proceedings or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department of mental health, or the director's designee. All such reports may be disclosed by the department of mental health to law enforcement officers and public health officers, but only to the extent necessary to carry out the responsibilities of their offices, and to the department of social services, **and the department of health and senior services**, and to boards appointed pursuant to sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or client as necessary to report or have investigated abuse, neglect, or rights violations of patients, residents or clients provided that all such law enforcement officers, public health officers, department of social services' officers, **department of health and senior services' officers**, and boards shall be obligated to keep such information confidential;

(2) Except as otherwise provided in this section, the proceedings, findings, deliberations, reports and minutes of committees of health care professionals as defined in section 537.035, RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the responsibility to evaluate, maintain, or monitor the quality and utilization of mental health services are privileged and shall not be subject to the discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible into evidence into any judicial or administrative action for failure to provide adequate or appropriate care. Such committees may exist, either within department facilities or its agents, contractors, or vendors, as applicable. Except as otherwise provided in this section, no person who was in attendance at any investigation or committee proceeding shall be permitted or required to disclose any information acquired in connection with or in the course of such proceeding or to disclose any opinion, recommendation or evaluation of the committee or board or any member thereof; provided, however, that information otherwise discoverable or admissible from original sources is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before any committee or in the course of any investigation, nor is any member, employee or agent of such committee or other person appearing before it to be prevented from testifying as to matters within their personal knowledge and in accordance with the other provisions of this section, but such witness cannot be questioned about the testimony or other proceedings before any investigation or before any committee;

(3) Nothing in this section shall limit authority otherwise provided by law of a health care licensing board of the state of Missouri to obtain information by subpoena or other authorized process from investigation committees or to require disclosure of otherwise confidential information relating to matters and investigations within the jurisdiction of such health care licensing boards; provided, however, that such information, once obtained by such board and associated persons, shall be governed in accordance with the provisions of this subsection;

(4) Nothing in this section shall limit authority otherwise provided by law in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the entity or agency authorized to implement a system to protect and advocate the rights of persons with developmental disabilities under the provisions of 42 U.S.C. 6042 and the entity or agency authorized to implement a system to protect and advocate the rights of persons with mental illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve to negate assurances that have been given by the governor of Missouri to the U.S. Administration on Developmental Disabilities, Office of Human Development Services, Department of Health and Human Services concerning access to records by the agency designated as the protection and advocacy system for the state of Missouri. However, such information, once obtained by such entity or agency, shall be governed in accordance with the provisions of this subsection.

4. 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 liability for making such a report or for testifying unless such person acted in bad faith or with malicious purpose.

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 residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client or employee because he or she 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.

7. Any person who is discharged as a result of an administrative substantiation of allegations contained in a report of abuse or neglect may, after exhausting administrative remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county in which such person resides within ninety days of such final administrative decision. The court may accept an appeal up to twenty-four months after the party filing the appeal received notice of the department's determination, upon a showing that:

- (1) Good cause exists for the untimely commencement of the request for the review;
- (2) If the opportunity to appeal is not granted it will adversely affect the party's opportunity for employment; and
- (3) There is no other adequate remedy at law.

660.250. As used in sections 660.250 to [660.305] **660.320**, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including financial exploitation by any person, firm or corporation;

(2) "Court", the circuit court;

(3) "Department", the department of [social services] **health and senior services**;

(4) "Director", director of the department of [social services] **health and senior services** or his **or her** designees;

(5) "Eligible adult", a person sixty years of age or older or an adult with a handicap, as defined in section 660.053, 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;

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

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

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

(9) "Least restrictive environment", a physical setting where protective services for the eligible adult and accommodation is provided in a manner no more restrictive of an individual's personal liberty and no more intrusive than necessary to achieve care and treatment objectives;

(10) "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 his failure or inability to provide for his 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, 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;

(11) "Neglect", the failure to provide services to an eligible adult by any person, firm or corporation with a legal or contractual duty to do so, when such failure presents either an imminent danger to the health, safety, or welfare of the client or a substantial probability that death or serious physical harm would result;

(12) "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 essential human needs.

660.261. Upon receipt of a report that an eligible adult between the ages of eighteen and fifty-nine is facing a likelihood of serious physical harm, the department shall:

- (1) Investigate or refer the report to appropriate law enforcement **or state** agencies; and
- (2) Provide services or refer to local community **or state** agencies.

660.264. 1. A statement made by a person sixty years of age or older, or an adult with a disability, as defined in section 660.053, to an investigator for the department of health and senior services or to a member of law enforcement as defined by section 43.010, RSMo, relating to an offense, crime, or violation pursuant to sections 198.003 to 198.090, RSMo, sections 198.096 to 198.186, RSMo, section 660.050 and sections 660.250 to 660.320, not otherwise admissible by statute or court rule, is only admissible in evidence in administrative or civil actions brought by the department or in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

(1) Such statement is made by affidavit and is in substantially the following form and content:

THE STATE OF.....

COUNTY OF.....

AFFIDAVIT

Before me, the undersigned authority, personally appeared, who, being by me duly sworn, deposed as follows:

My name is, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

The facts herein stated are:

.....
Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this day of,

.....
(Signed)

(Seal)

(2) The court finds, in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient indicia of reliability and the affiant was competent at the time the statement was given;

(3) (a) The person testifies at the proceedings;
(b) The person is deceased; or
(c) The court determines that, due to the person's physical or mental condition, the person is incompetent to testify at the time of the criminal, civil, or administrative proceeding.

2. Notwithstanding subsection 1 of this section or any provision of law or rule of evidence requiring corroboration of statements, admissions, or confessions of the defendant, and notwithstanding any prohibition of hearsay evidence, a statement by a person sixty years of age or older, or an adult with a disability, as defined in section 660.053, is sufficient corroboration of a statement, admission, or confession.

3. A statement shall not be admitted pursuant to this section unless the prosecuting attorney or a representative of the department of health and senior services makes known to the accused or his or her counsel of the intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the accused or his or her counsel with a fair opportunity to prepare to meet the statement.

4. Nothing in this section shall be construed to limit the admissibility of statements, admissions, or confessions otherwise admissible by law.

660.270. When the department receives a report that there **has been abuse or neglect, or that there otherwise** is a likelihood of serious physical harm to an eligible adult and that he **or she** is in need of protective services and the department is unable to conduct an investigation because access to the eligible adult is barred by any person, the director may petition the appropriate court for a warrant **or other order** to enter upon the described premises and investigate the report **or to produce the information**. The application for the warrant **or order** shall identify the eligible adult and the facts and circumstances which require the issuance of the warrant **or order**. The director may also seek an order to enjoin the person **from** barring access **to an eligible adult or** from interfering with the investigation. If the court finds that, based on the report and relevant circumstances and facts, probable cause exists showing that the eligible adult faces **abuse or neglect, or otherwise faces** a likelihood of serious physical harm and is in need of protective services and the director has been prevented by another person from investigating the report, the court may issue the warrant or enjoin the interference with the investigation or both.

660.300. 1. [Beginning January 1, 1993,] When any physician, dentist, chiropractor, optometrist, podiatrist, **medical resident**, intern, nurse **practitioner, physician's assistant**, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services employee, or employee of the department of social services [or 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 or responsibility for the case management of a person sixty years of age or older or an eligible adult** has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he shall immediately report or cause a report to be made to the department.

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

3. The report shall contain 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 abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation. **If the report is made by a physician of the in-home services client 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 shall be notified.**

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

5. Upon receipt of a report, the department shall initiate a prompt and thorough investigation.

6. If the investigation indicates possible abuse or neglect 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. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the in-home services client 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 in-home services client 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 in-home services client, for a period not to exceed thirty days.

7. **If the alleged perpetrator of abuse or neglect is an in-home services employee, and such employee has been determined guilty by a court of competent jurisdiction and the supervising in-home service provider fails to report a known incident of abuse or neglect by such employee to the department, the department may**

impose an administrative penalty of one thousand dollars per violation against such supervising in-home service provider.

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

[8.] 9. Anyone, except any person who has abused or neglected 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.

[9.] 10. 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.

[10.] 11. 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 an in-home services employee because he or any member of his 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 he has reasonable cause to believe has been committed or has occurred.

[11.] 12. Any person who knowingly abuses or neglects an in-home services client shall be guilty of a class D felony.

[12.] 13. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who **are or have been employed by an in-home service provider agency and who** have been finally determined by the department, pursuant to section 660.315, to have recklessly[,] or knowingly [or purposely] abused or neglected an in-home services client [while employed by an in-home services provider agency]. **For purposes of this subsection only, "knowingly" and "recklessly" shall have the terms that are prescribed to them in this subsection. A person acts "knowingly" with respect to the person's conduct when a reasonable person should be aware of the result caused by his or her conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.**

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 [division] **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 **immediately** initiate an investigation **and report information gained from such investigation to appropriate law enforcement authorities.**

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 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 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 **are or have been employed by an in-home service provider agency and 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 **and who came to be known to the person, directly, or indirectly** while employed by an in-home services provider agency.

660.310. 1. Notwithstanding any other provision of law, if the department of health and senior services proposes to deny, suspend, place on probation or terminate an in-home services provider agency contract, the department of health and senior

services shall serve upon the applicant or contractor written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or contractor shall have thirty days from the date of mailing or delivery of the notice to file a complaint requesting a hearing before the administrative hearing commission. The administrative hearing commission may consolidate an applicant's or contractor's complaint with any proceeding before the administrative hearing commission filed by such contractor or applicant pursuant to subsection 3 of section 208.156, RSMo, involving a common question of law or fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which the department has denied a contract to an in-home services provider agency, the administrative hearing commission shall conduct a hearing to determine the underlying basis for such denial. However, in the event that the administrative hearing commission finds that the contract denial is supported by the facts and the law, the case need not be returned to the department. The administrative hearing commission's decision shall constitute affirmation of the department's contract denial.

2. The department of health and senior services may issue letters of censure or warning without formal notice or hearing.

3. The administrative hearing commission may stay the suspension or termination of an in-home services provider agency's contract, or the placement of the contractor on probation, pending the commission's findings and determination in the cause, upon such conditions, with or without the agreement of the parties, as the commission deems necessary and appropriate, including the posting of bond or other security except that the commission shall not grant a stay, or if a stay has already been entered shall set aside its stay, unless the commission finds that the contractor has established that servicing the department's clients pending the commission's final determination would not present an imminent danger to the health, safety, or welfare of any client or a substantial probability that death or serious physical harm would result. The commission may dissolve the stay at any time that it finds that the contractor has violated any of the conditions of the stay. Such stay shall remain in effect, unless earlier dissolved by the commission, pending the decision of the commission and any subsequent departmental action at which time the stay shall be dissolved. In any case in which the department has refused to issue a contract, the commission shall have no authority to stay or to require the issuance of a contract pending final determination by the commission.

4. Stays granted to contractors by the administrative hearing commission shall,

as a condition of the stay, require at a minimum that the contractor under the stay operate under the same contractual requirements and regulations as are in effect, from time to time, as are applicable to all other contractors in the program.

5. The administrative hearing commission shall make its final decision based upon the circumstances and conditions as they existed at the time of the action of the department and not based upon circumstances and conditions at the time of the hearing or decision of the commission.

6. In any proceeding before the administrative hearing commission pursuant to this section, the burden of proof shall be on the contractor or applicant seeking review.

7. Any person, including the department, aggrieved by a final decision of the administrative hearing commission may seek judicial review of such decision as provided in section 621.145.

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 person**, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) [His] **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) [His] **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 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 [division of aging] **department** or his **or her** 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 [division of aging] **department or his or her designee** shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification list. The director of the [division of aging] **department or his or her designee** 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 [social services] **health and senior services** or one of its divisions.

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

(1) Whether the person acted recklessly[, **or** 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) **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 [division's] **department of health and senior services'** 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 [division of aging] **department** whether or not a particular name is on the list. The [division] **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 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.**

14. 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; **or**
- (6) Is a licensed adult day care provider.**

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] **Prior to allowing any person who has been hired as** 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 **or contracted for** 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. **If an applicant has not resided in this state for five consecutive years prior to the date of their application for employment, the provider shall request a nationwide check for the purpose of determining if the applicant has a prior criminal history in other states. The fingerprint cards and any required fees shall be sent to the highway patrol's criminal records divisions. The first set of fingerprints shall be used for searching the state repository of criminal history information. If no identification is made, the second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division, for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual. The provisions relating to applicants for employment who have not resided in this state for five consecutive years shall apply**

only to persons who have no employment history with a licensed Missouri facility during that five year period. Notwithstanding the provisions of section 610.120, RSMo, all records related to any criminal history information discovered shall be accessible and available to the provider making the record request; and

(2) Make an inquiry to the department of [social services] **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] **43.540**, RSMo, the requesting entity may require that the applicant reimburse the provider for the cost of such record check. **When a provider requests a nationwide criminal background check pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any background check required pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal background check shall be subject to the availability of appropriations.**

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 subdivision "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 **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 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 [social services] **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. 1. 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 **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 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 division of family services for the purpose of licensure under chapter 210, RSMo.

2. The department shall, upon request, provide to the division 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.

660.321. Notwithstanding any other provision of law, the department shall not disclose personally identifiable medical, social, personal, or financial records of any eligible adult being served by the division of senior services except when disclosed in a manner that does not identify the eligible adult, 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 for such purposes as the department may determine;

(2) The attorney general, to perform his constitutional or statutory duties;

(3) The department of mental health for residents placed through that department, to perform its constitutional or statutory duties;

(4) Any appropriate law enforcement agency, to perform its constitutional or

statutory duties;

(5) The eligible adult, his or her legal guardian; and

(6) The department of social services for individuals who receive Medicaid benefits, to perform its constitutional or statutory duties.

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