

FIRST REGULAR SESSION

SENATE BILL NO. 42

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0438S.02I

AN ACT

To repeal sections 191.900, 191.910, 197.367, 198.022, 198.026, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073, 198.080, 198.082, 198.085, 198.088, 198.093, 198.525, 198.526, 198.531, 565.186, 565.188, 630.140, 630.167, 660.250, 660.260, 660.263, 660.270, and 660.300, RSMo, and to enact in lieu thereof thirty-six new sections relating to protection of the elderly, with penalty provisions.

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

Section A. Sections 191.900, 191.910, 197.367, 198.022, 198.026, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073, 198.080, 198.082, 198.085, 198.088, 198.093, 198.525, 198.526, 198.531, 565.186, 565.188, 630.140, 630.167, 660.250, 660.260, 660.263, 660.270, and 660.300, RSMo, are repealed and thirty-six new sections enacted in lieu thereof, to be known as sections 187.085, 187.107, 187.111, 187.113, 191.900, 191.910, 198.022, 198.026, 198.030, 198.032, 198.036, 198.039, 198.041, 198.046, 198.067, 198.070, 198.073, 198.074, 198.080, 198.082, 198.085, 198.088, 198.093, 198.345, 198.525, 198.526, 198.531, 565.186, 565.188, 630.140, 630.167, 660.250, 660.260, 660.263, 660.270, and 660.300, to read as follows:

187.085. 1. All Medicaid participation agreements entered into between the department of social services and in-home services provider agencies shall include a requirement that all in-home services employees of such agencies receive training on identification and prevention of elder abuse and neglect.

2. All Medicaid participation agreements entered into between the department of social services and long-term care facilities shall include a requirement that such facilities comply with the provisions of sections 660.600 to 660.608 regarding access to such facilities by ombudsmen, or representatives of the office of the state ombudsmen for long-term care facility residents and the office of advocacy and assistance for the

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

elderly pursuant to chapter 660.

187.107. 1. The division of senior services within the department of health and senior services shall create and make available through the department's Internet web site information that, to the best of their ability, provides a listing of all public or private companies or organizations providing services for older adults, including but not limited to adult day care, respite care, in-home care services, services provided by the area agency on aging and long-term care facilities operating in the state of Missouri. Such information shall:

(1) List the companies, organizations and facilities by category and by region of the state; and

(2) Include the services available through each company, organization and facility; and

(3) Include a disclaimer that indicates that the division is providing information on the availability of services throughout the state only and such publication should not be interpreted as a rating or endorsement of any such company, organization or facility; and

(4) Include information to consumers on where to obtain inspection and survey information on listed companies, their licensure status and any other information that will provide consumers with information regarding the quality of services offered by providers of senior services; and

(5) Include the information in the division's current senior guide.

2. The information in this section provided on the department's Internet web site shall be:

(1) Categorized by region of the state;

(2) Available in a format that is easily printed and downloaded; and

(3) Accessible to the area agencies on aging.

187.111. The department and law enforcement shall share resources as necessary to incorporate into current training curriculum for all law enforcement and investigative staff, the proper handling of cases involving elder abuse. The department and law enforcement shall develop a checklist to guide personnel during elder abuse investigations. Additionally, training shall be made available to noninvestigatory personnel and volunteers regarding the identification and reporting of elder abuse.

187.113. The department of health and senior services shall investigate incidents and reports of elder abuse using the procedures established in sections 660.250 to 660.295 and notwithstanding any other provision of the law to the contrary, shall promptly refer all suspected cases of elder abuse to the appropriate law

enforcement agency and prosecutor and determine whether protective services are required pursuant to sections 660.250 to 660.295.

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

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

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

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

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

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

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

(7) "Health care provider", any person [delivering] **who is paid to deliver**, or [purporting] **purports** to deliver, any health care, and including any employee, agent or other representative of such a person;

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

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

191.910. 1. The attorney general shall have authority to investigate alleged or suspected violations of sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910** and shall have all powers provided by sections 407.040 to 407.090, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910** as if the acts enumerated in subsections 1 to 3 of section 191.905 are unlawful acts proscribed by chapter 407, RSMo, provided that if the attorney general exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; and may exercise all of the

powers provided by subsections 1 and 2 of section 578.387, RSMo, in connection with investigations of alleged or suspected violations of sections 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section 191.905 involve "public assistance" as defined by section 578.375, RSMo. The attorney general and [his] **the attorney general's** authorized investigators shall be authorized to serve all subpoenas and civil process related to the enforcement of sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910** and chapter 407, RSMo. In order for the attorney general to commence a state prosecution for violations of sections 191.900 to 191.910, the attorney general shall prepare and forward a report of the violations to the appropriate prosecuting attorney. Upon receiving a referral, the prosecuting attorney shall either commence a prosecution based on the report by the filing of a complaint, information, or indictment within sixty days of receipt of said report or shall file a written statement with the attorney general explaining why criminal charges should not be brought. This time period may be extended by the prosecuting attorney with the agreement of the attorney general for an additional sixty days. If the prosecuting attorney commences a criminal prosecution, the attorney general or [his] **the attorney general's** designee shall be permitted by the court to participate as a special assistant prosecuting attorney in settlement negotiations and all court proceedings, subject to the authority of the prosecuting attorney, for the purpose of providing such assistance as may be necessary. If the prosecuting attorney fails to commence a prosecution and fails to file a written statement listing the reasons why criminal charges should not be brought within the appropriate time period, or declines to prosecute on the basis of inadequate office resources, the attorney general [shall have authority to] **may** commence prosecutions for violations of sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910**. In cases where a defendant pursuant to a common scheme or plan has committed acts which constitute or would constitute violations of sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910** in more than one state, the attorney general shall have the authority to represent the state of Missouri in any plea agreement which resolves all criminal prosecutions within and without the state, and such agreement shall be binding on all state prosecutors.

2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to 191.910, **or section 198.070, RSMo, if related to a violation of sections 191.900 to 191.910** any record in the possession or control of a health care provider, or in the possession or control of another person on behalf of a health care provider, including but not limited to any record relating to patient care, business or accounting records, payroll records and tax records, whether written or in an electronic format, shall be made available by the health care provider to the attorney general or the court, and shall be admissible into evidence, regardless of any statutory or common law privilege which such health care provider, record custodian or patient might

otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose any record obtained pursuant to this section, other than in connection with a proceeding instituted or pending in any court or administrative agency. The access, provision, use, and disclosure of records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said section, as may be amended from time to time, and to regulations promulgated pursuant to said section.

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

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;

(8) If the applicant operates or has previously operated one or more long-term care facilities in this state or any equivalent facility or facilities in another state, the applicant has a satisfactory history of compliance with state and federal laws in the operation of all such long-term care facilities;

(9) The applicant has not had a license denied or revoked based upon lack of financial capacity in the five years prior to the date of application.

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. **Except as otherwise provided for in section 198.526**, 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.

198.026. 1. Whenever a duly authorized representative of the department finds upon an inspection of a facility that it is not in compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder, the operator or administrator shall be informed of the deficiencies in an exit interview conducted with the operator or administrator or his designee. The department shall inform the operator or administrator, in writing, of any violation of a class I standard at the time the determination is made. A written report shall be

prepared of any deficiency for which there has not been prompt remedial action, and a copy of such report and a written correction order shall be sent to the operator or administrator by certified mail or other delivery service that provides a dated receipt of delivery at the facility address within ten working days after the inspection, stating separately each deficiency and the specific statute or regulation violated.

2. The operator or administrator shall have five working days following receipt of a written report and correction order regarding a violation of a class I standard and ten working days following receipt of the report and correction order regarding violations of class II or class III standards to request any conference and to submit a plan of correction for the department's approval which contains specific dates for achieving compliance. Within five working days after receiving a plan of correction regarding a violation of a class I standard and within ten working days after receiving a plan of correction regarding a violation of a class II or III standard, the department shall give its written approval or rejection of the plan. If there was a violation of any class I standard, immediate corrective action shall be taken by the operator or administrator and a written plan of correction shall be submitted to the department. The department shall give its written approval or rejection of the plan and if the plan is acceptable, a reinspection shall be conducted within twenty calendar days of the exit interview to determine if deficiencies have been corrected. If there was a violation of any class II standard and the plan of correction is acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar days from the date of the exit conference to determine the status of all previously cited deficiencies. If there was a violation of class III standards sufficient to establish that the facility was not in substantial compliance, an unannounced reinspection shall be conducted within one hundred twenty days of the exit interview to determine the status of previously identified deficiencies.

3. For any violation or deficiency resulting in a notice of noncompliance and involving staffing issues directly related to patient care, the department may direct a facility to implement corrective actions relating to staffing, including but not limited to qualifications of staff, staffing ratios, continuing education, and staff supervision. Such decision may be appealed to the administrative hearing commission; except that the commission shall not have the authority to stay the effect of the order pending final resolution of the case.

4. If, following the reinspection, the facility is found not in substantial compliance with sections 198.003 to 198.096 and the standards established thereunder or the operator is not correcting the noncompliance in accordance with the approved plan of correction, the department shall issue a notice of noncompliance, which shall be sent by certified mail or other delivery service that provides a dated receipt of delivery to each person disclosed to be an owner or operator of the facility, according to the most recent information or documents on file with the

department.

[4.] 5. The notice of noncompliance shall inform the operator or administrator that the department may seek the imposition of any of the sanctions and remedies provided for in section 198.067, or any other action authorized by law.

[5.] 6. At any time after an inspection is conducted, the operator may choose to enter into a consent agreement with the department to obtain a probationary license. The consent agreement shall include a provision that the operator will voluntarily surrender the license if substantial compliance is not reached in accordance with the terms and deadlines established under the agreement. The agreement shall specify the stages, actions and time span to achieve substantial compliance.

[6.] 7. Whenever a notice of noncompliance has been issued, the operator shall post a copy of the notice of noncompliance and a copy of the most recent inspection report in a conspicuous location in the facility, and the department shall send a copy of the notice of noncompliance to the division of family services of the department of social services, the department of mental health, and any other concerned federal, state or local governmental agencies.

198.030. Notwithstanding any other law to the contrary, every residential care facility I and residential care facility II shall meet or exceed the federal requirements relating to the posting of deficiencies for federally certified skilled nursing facilities and intermediate care facilities.

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 **to, from, or** through that department;
- (4) Any appropriate law enforcement agency;
- (5) The resident, **[his] the resident's guardian, or conservator**, 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. **Unsubstantiated inspection reports, and written reports of investigations of unsubstantiated complaints shall not be used by insurance carriers for purposes of insurance underwriting.**

3. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

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

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

(1) Failed or refused to comply with class I or II standards, as established by the department pursuant to section 198.085 **or where the operator was cited for failure to comply with a particular class I standard on two different occasions within a twenty-four month period;** 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 noncompliance 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) Refused to allow representatives of the department to inspect the facility for compliance with standards;

(3) 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) Demonstrated financial incapacity to operate and conduct the facility in accordance with the provisions of sections 198.003 to 198.096.

2. 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.

198.039. 1. Any person aggrieved by an official action of the department either refusing to issue a license or revoking a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo, et seq., except that the petition must be filed with the administrative hearing commission within fifteen days after the mailing or delivery of notice to the operator. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

2. The administrative hearing commission may stay the revocation of such license, pending the commission's findings and determination in the cause, upon such conditions 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, if upon application of the department the commission finds reason to believe that continued operation of a facility pending the commission's final determination would present an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. In any case in which the department has refused to issue a license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance or revocation of a license **based upon the circumstances and conditions as they existed at the time of the alleged deficiencies and not based upon circumstances and conditions after the time of the decision not to issue or revoke a license.** Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the facility is located. Review shall be had, except as modified herein, in accordance with the provisions of sections 621.189 and 621.193, RSMo.

198.041. 1. Any in-home provider agency aggrieved by a decision of the department to revoke a contract or impose sanctions may seek a determination thereon by the administrative hearing commission pursuant to section 621.045, RSMo, et seq.; except that, the petition must be filed with the administrative hearing commission within fifteen days after the mailing or delivery of notice to the owner or operator.

2. The administrative hearing commission shall accept evidence on and consider the effect of the provider's continued participation in the program on the health, safety, and welfare of the clients and the program. The person applying for such stay order shall not be granted such stay order unless such person has a reasonable likelihood of success upon the merits of his or her claim.

3. The administrative hearing commission may stay the revocation of such

contract, pending the commission's findings and determination of the cause, upon such conditions, with or without the agreement of the parties, as the commission deems necessary and appropriate not limited to 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 provider owner or operator has established reason to believe that continued operation of a facility 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. In such cases, the burden of going forward with the evidence as well as the ultimate burden of persuasion is upon the provider. 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. If the commission finds that a stay is appropriate pursuant to subsection 3 of this section, the commission shall not make such stay effective before the provider posts a bond sufficient to protect the interest of the state.

5. Stays granted to in-home providers shall, as a condition of the stay, require a minimum that the provider under the stay operate under the same contractual requirements and regulations as all other providers in the program.

6. The administrative hearing commission shall make the final decision as to the revocation of a contract 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.

7. Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the provider is located. Review shall be had, except as modified herein, in accordance with the provisions of sections 621.189 and 621.193, RSMo.

198.046. If a skilled nursing facility that has a private-pay certificate of need exemption has a private-pay resident who becomes eligible for Medicaid reimbursement after residing in the facility for a period in excess of one year, the facility may receive Medicaid reimbursement on behalf of such eligible individual without meeting the requirements of sections 197.300 to 197.366, RSMo, for up to ten percent of the facility's licensed beds.

198.067. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 198.003 to

198.096, to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no [less] **later** than fifteen days after the filing of the action.

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

3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of Section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is liable to the state for civil penalties of up to ten thousand dollars for each day that the violations existed or continue to exist, **regardless of whether they are later corrected**. Violations shall be presumed to continue to exist from the time they are found until the time the [division of aging] **department** finds them to have been corrected. The amount of the penalty shall be determined as follows:

(1) For each violation of a class I standard, not less than one hundred fifty dollars nor more than one thousand dollars;

(2) For each violation of a class II standard, not less than fifty dollars nor more than five hundred dollars;

(3) For each violation of a class III standard, not less than fifteen dollars nor more than one hundred fifty dollars;

(4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;

(5) For each specific class I violation by the same operator which has been cited **previously** within the past twenty-four months and for each specific class II or III violation by the same operator which has been cited **previously** within the past twelve months, double the amount last imposed.

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

4. Any individual who willfully and knowingly certifies pursuant to subsection (b)(3)(B)(I) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment. Any individual who willfully and knowingly causes another individual to certify pursuant to subsection (b)(3)(B)(I) of Section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.

5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.

6. Penalties collected pursuant to this section shall be deposited in the [division of aging] elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such penalties shall not be considered a charitable contribution for tax purposes.

7. To recover any civil penalty, the moving party shall prove by clear and convincing evidence that the violation occurred.

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

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

10. In addition to the civil penalties specified in 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.

198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, [intern,]

nurse, **nurse practitioner, physician's assistant**, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, facility administrator **or owner**, employee in a facility, or employee of the department of social services, **the department of health and senior services**, or of the department of mental health, coroner, [dentist,] hospital and clinic personnel engaged in examination, **care or treatment of persons**, 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 **as defined in section 660.250, RSMo**, has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.

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

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

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

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

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

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

8. Anyone who makes a report pursuant to this section or who testifies in any

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

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

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

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

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

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

198.073. 1. [Except as provided in subsection 3 of this section, a residential care facility II or residential care facility I shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.] **An individual may be accepted for residency in a residential care facility I or residential care facility II or remain in residence if the facility:**

(1) Provides for or secures appropriate services to meet the scheduled and unscheduled needs of the resident; and

(2) Has twenty-four hour staff appropriate in numbers and with appropriate skills to provide such services and upkeep of the facility; and

(3) Has a written plan, approved by the local fire department, for the protection of all residents in the event of disasters. Such plan may include keeping residents in place, evacuating residents to areas of refuge, evacuating residents from the building when necessary, or other methods of protection based on the emergency and the individual building design; and

(4) Has written verification signed by the resident, or a family member or legal representative of the resident, the resident's physician, and the facility representative stating how the facility will meet the scheduled and unscheduled needs of the resident.

2. Notwithstanding the provisions of subsection 3 of this section, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a residential care facility II or residential care facility I if approved by a physician.

3. A residential care facility II may admit or continue to care for [those persons who are physically capable of negotiating a normal path to safety using assistive devices or aids when necessary but are mentally incapable of negotiating such a path to safety that have been diagnosed with Alzheimer's disease or Alzheimer's related dementia] **individuals with dementia who require assistance in order to evacuate in the event of a disaster**, if the following requirements are met:

(1) [A family member or legal representative of the resident, in consultation with the resident's primary physician and the facility, determines that the facility can meet the needs of the resident. The facility shall document the decision regarding continued placement in the facility through written verification by the family member, physician and the facility representative;

(2)] The facility is equipped with an automatic sprinkler system, in compliance with National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire door system and smoke alarms in compliance with 13-3.4 of the [1997] **2000** Life Safety Codes for Existing Health Care Occupancy;

[(3) In a multilevel facility, residents who are mentally incapable of negotiating a pathway to safety are housed only on the ground floor;

(4)] (2) The facility shall take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds;

[(5) The facility shall be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility.]

(3) In meeting [such] staffing requirements, every resident [who is mentally incapable of negotiating a pathway to safety] **with dementia who requires assistance in order to**

evacuate in the event of a disaster shall count as three residents. All on-duty staff of the facility shall, at all times, be awake, dressed and prepared to assist residents in case of emergency;

[(6)] **(4)** Every resident [mentally incapable of negotiating a pathway to safety in the facility] **with dementia who requires assistance in order to evacuate in the event of disaster** shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an assessment [instrument utilized by the division of aging known as the minimum data set used for assessing residents of skilled nursing facilities] **tool for community-based services for persons with dementia determined by the department:**

- (a) Upon admission;
- (b) At least semiannually; and
- (c) When a significant change has occurred in the resident's condition which may require additional services;

[(7)] **(5)** Based on the assessment in subdivision [(6)] **(4)** of this subsection, a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan for every resident [who is mentally incapable of negotiating a pathway to safety] **with dementia who requires assistance in order to evacuate in the event of a disaster. Such service plan must include an evacuation plan for the resident. The service plan shall be reviewed annually with the resident, the resident's legal representative or the resident's family.** Such individualized service plan shall be implemented by the facility's staff to meet the specific needs of the resident;

[(8)] **(6)** Every facility shall use a personal electronic monitoring device for any resident whose physician recommends the use of such device;

[(9)] All facility personnel who will provide direct care to residents who are mentally incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training within the first thirty days of employment. At least twelve hours of such training shall be classroom instruction, with six classroom instruction hours and two on-the-job training hours related to the special needs, care and safety of residents with dementia;

(10) All personnel of the facility, regardless of whether such personnel provides direct care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at least four hours of in- service training, with at least two such hours relating to the care and safety of residents who are mentally incapable of negotiating a pathway to safety;

[(11)] **(7)** **The facility shall comply with the training requirements pursuant to subdivisions (1) and (2) of subsection 8 of section 660.050, RSMo;**

(8) Every facility shall make available and implement self-care, productive and leisure

activity programs for persons with dementia which maximize and encourage the resident's optimal functional ability;

[(12)] (9) Every facility shall develop and implement a plan to protect the rights, privacy and safety of all residents and to prevent the financial exploitation of all residents.]; and

(13) A licensee of any licensed residential care facility or any residential care facility shall ensure that its facility does not accept or retain a resident who is mentally incapable of negotiating a normal pathway to safety using assistive devices and aids that:

- (a) Has exhibited behaviors which indicate such resident is a danger to self or others;
- (b) Is at constant risk of elopement;
- (c) Requires physical restraint;
- (d) Requires chemical restraint. As used in this subdivision, the following terms mean:
 - a. "Chemical restraint", a psycho pharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms;
 - b. "Convenience", any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interests;
 - c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing residents;
- (e) Requires skilled nursing services as defined in subdivision (17) of section 198.003 for which the facility is not licensed or able to provide;
- (f) Requires more than one person to simultaneously physically assist the resident with any activity of daily living, with the exception of bathing;
- (g) Is bed-bound or chair-bound due to a debilitating or chronic condition.

4. The facility shall not care for any person unless such facility is able to provide appropriate services for and meet the needs of such person.

5.] 4. Nothing in this chapter shall prevent a facility from discharging a resident who is a danger to himself or herself, or to others.

[6. The training requirements established in subdivisions (9) and (10) of subsection 3 of this section shall fully satisfy the training requirements for the program described in subdivision (18) of subsection 1 of section 208.152, RSMo.

7. The division of aging] **5. The department** shall promulgate rules to ensure compliance with this section and to sanction facilities that fail to comply with this section. 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, 1999, shall be invalid and void.

6. As used in this section, the term "dementia" means a general term for the loss of thinking, remembering, and reasoning so severe that it interferes with an individual's daily functioning. Symptoms may also include changes in personality, mood, and behavior. Dementia is irreversible when caused by disease or injury but may be reversible when related to depression, drug interaction, thyroid, vitamin, or nutrition imbalances.

198.074. 1. Long term care facilities, residential care facilities I and residential care facilities II shall make immunizations for influenza and pneumonia available to residents sixty-five years of age or older, on-site on a yearly basis or upon admission. Written consent for such immunizations shall be given by the resident and his or her physician. The department shall prescribe by rule, the manner by which such facilities shall document compliance with this section, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making an immunization available if there is a shortage of that immunization in this state as determined by the director of the department of health and senior services.

2. 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.

198.080. [The division of aging shall develop flexible assessment procedures for individuals in long-term care and those considering long-term care services which follow the individual through the continuum of care, including periodic reassessment. By January 1, 2002, the division of aging shall promulgate rules and regulations to implement the new assessment system and shall make a report to the appropriate house and senate committees of the general assembly regarding the new assessment system. 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, 1999, shall be invalid and void.] **The departments of health and senior services, social services, mental health, and elementary and secondary education shall work together to compare and evaluate their assessment procedures for individuals receiving long-term care services and those individuals considering long-term care services. Assessment procedures that are used for eligibility, care needs determination, placement, and funding of care shall be compared and evaluated. Following such evaluation, the departments shall work together to make changes in the assessments procedures utilized by each department to provide uniformity and equity of services so the care needs of individuals are met regardless of the program or department providing services and funding. The assessment of individuals with long-term care needs shall include, but is not limited to, the following:**

(1) A comprehensive assessment of the individual's care needs and whether such needs are met or unmet; and

(2) An assessment of the individual's cognitive ability and the supports they would need to perform activities of daily living on a day-to-day basis; and

(3) An evaluation of the individual's support system in the community that could enable the individual to live in a community setting instead of an institution if the individual desires to be in a community setting; and

(4) Periodic reassessment of the individual's health, care needs, and support system.

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care facility after January 1, 1980, shall have successfully completed a nursing assistant training program approved by the department [or shall enroll in and begin the first available approved training program which is scheduled to commence within ninety days of the date of the nursing assistant's employment] **which shall be completed within one hundred twenty days of employment.** Training programs shall be offered at a location most reasonably accessible to the enrollees in each class. The program may be established **and carried out** by the skilled nursing or intermediate care facility **so long as that facility has not been cited for any class I violation within the past twenty-four months**, by a professional organization, or by the department, and training shall be given by the personnel of the facility, by a professional organization, by the department, by any junior college or by the vocational education department of any high school. **No program shall offer or provide training pursuant to this section unless the department has approved the program prior to the offering or provision of such training.**

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

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

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

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

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

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

198.085. In establishing standards for each type of facility, the department shall classify the standards into three categories for each type of licensed facility as follows:

(1) Class I standards are standards the violation of which would present either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result. **Class I standards shall be divided into the following violation categories:**

(a) **Class I death violations which are violations of class I standards that have resulted in the death of a resident;**

(b) **Class I harm violations which are violations of class I standards that have resulted in serious physical harm to a resident; and**

(c) **Class I risk violations which are violations of class I standards that present an imminent danger to the health, safety, or welfare of a resident or a substantial probability that death or serious physical harm would result;**

(2) Class II standards are standards which have a direct or immediate relationship to the

health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which have an indirect or a potential impact on the health, safety or welfare of any resident.

198.088. 1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that:

(1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided by the facility. The facility shall also retain and make available for public inspection at the facility to staff, residents, their families or legal representative and the public a complete copy of each official notification from the department of violations, deficiencies, licensure approvals, disapprovals, and responses, a description of services, basic rate and charges for any services not covered by the basic rate, if any, and a list of names, addresses and occupation of all individuals who have a proprietary interest in the facility;

(2) Policies relating to admission, transfer, and discharge of residents shall assure that:

(a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts;

(b) As changes occur in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities; and

(c) Except in the case of an emergency, the resident, [his] **the resident's** next of kin, attending physician, and the responsible agency, if any, are consulted at least thirty days in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting [his] **the resident's** needs through other resources;

(3) Policies define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and describe the mechanism for monitoring and controlling their use;

(4) Policies define procedures for submittal of complaints and recommendations by residents and for assuring response and disposition;

(5) There are written policies governing access to, duplication of, and dissemination of information from the resident's records;

(6) Each resident admitted to the facility:

(a) Is fully informed of his **or her** rights and responsibilities as a resident. Prior to or at the time of admission, a list of resident rights shall be provided to each resident, or [his] **the resident's** designee, next of kin, or legal guardian. A list of resident rights shall be posted in a conspicuous location in the facility and copies shall be available to anyone upon request;

(b) Is fully informed in writing, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered under the federal or state programs or not covered by the facility's basic per diem rate;

(c) Is fully informed by a physician of his **or her** health and medical condition unless medically contraindicated, as documented by a physician in his **or her** resident record, and is afforded the opportunity to participate in the planning of [his] **the resident's** total care and medical treatment and to refuse treatment, and participates in experimental research only upon [his] **the resident's** informed written consent;

(d) Is transferred or discharged only for medical reasons or for [his] **the resident's** welfare or that of other residents, or for nonpayment for [his] **the resident's** stay. No resident may be discharged without notice of his **or her** right to a hearing and an opportunity to be heard on the issue of whether [his] **the resident's** immediate discharge is necessary. Such notice shall be given in writing no less than thirty days in advance of the discharge except in the case of an emergency discharge. In emergency discharges a written notice of discharge and right to a hearing shall be given as soon as practicable and an expedited hearing shall be held upon request of the resident, next of kin, legal guardian, or nursing facility;

(e) Is encouraged and assisted, throughout [his] **the resident's** period of stay, to exercise his **or her** rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff or to outside representatives of [his] **the resident's** choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) May manage [his] **the resident's** personal financial affairs, and, to the extent that the facility assists in such management, has [his] **the resident's** personal financial affairs managed in accordance with section 198.090;

(g) Is free from mental and physical abuse **and neglect**, and free from chemical and physical restraints except as follows:

- a. When used as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being;
- b. When authorized in writing by a physician for a specified period of time; and
- c. When necessary in an emergency to protect the resident from injury to himself **or herself**, or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician.

When restraints are indicated, devices that are least restrictive, consistent with the resident's total treatment program, shall be used;

(h) Is ensured confidential treatment of all information contained in [his] **the resident's** records, including information contained in an automatic data bank, and [his] **the resident's** written consent shall be required for the release of information to persons not otherwise authorized under law to receive it;

(i) Is treated with consideration, respect, and full recognition of **[his] the resident's** dignity and individuality, including privacy in treatment and in care for **[his] the resident's** personal needs;

(j) Is not required to perform services for the facility;

(k) May communicate, associate and meet privately with persons of **[his] the resident's** choice, unless to do so would infringe upon the rights of other residents, and send and receive his **or her** personal mail unopened;

(l) May participate in activities of social, religious and community groups at **[his] the resident's** discretion, unless contraindicated for reasons documented by a physician in the resident's medical record;

(m) May retain and use **[his] the resident's** personal clothing and possessions as space permits;

(n) If married, is ensured privacy for visits by his or her spouse; if both are residents in the facility, they are permitted to share a room; and

(o) Is allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of **[his] the resident's** own choice;

(7) The resident or **[his] the resident's** designee, next of kin or legal guardian receives an itemized bill for all goods and services actually rendered;

(8) A written account, available to residents and their families, is maintained on a current basis for each resident with written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or on behalf of the resident.

2. Each facility and the department shall encourage and assist residents in the free exercise of the resident's rights to civil and religious liberties, including knowledge of available choices and the right to independent personal decision. Each resident shall be given a copy of a statement of **[his] the resident's** rights and responsibilities, including a copy of the facility's rules and regulations. Each facility shall prepare a written plan to ensure the respect of each resident's rights and privacy and shall provide appropriate staff training to implement the plan.

3. (1) Each facility shall establish written procedures approved by the department by which complaints and grievances of residents may be heard and considered. The procedures shall provide for referral to the department of any complaints or grievances not resolved by the facility's grievance procedure.

(2) Each facility shall designate one staff member, employed full time, referred to in this subsection as the "designee", to receive all grievances when they are first made.

(3) If anyone wishes to complain about treatment, conditions, or violations of rights, **[he] such person** shall write or cause to be written his **or her** grievance or shall state it orally to the designee no later than fourteen days after the occurrence giving rise to the grievance. When

the department receives a complaint that does not contain allegations of abuse or neglect or allegations which would, if substantiated, constitute violation of a class I or class II standard as defined in section 198.085, and the complainant indicates that the complaint was not filed with the facility prior to the reporting of it to the department, the department may in such instances refer the complaint to the staff person who is designated by the facility to receive all grievances when they are first made. In such instances the department shall assure appropriate response from the facility, assure resolution at a subsequent on-site visit and provide a report to the complainant. The designee shall confer with persons involved in the occurrence and with any other witnesses and, no later than three days after the grievance, give a written explanation of findings and proposed remedies, if any, to the complainant and to the aggrieved party, if someone other than the complainant. Where appropriate because of the mental or physical condition of the complainant or the aggrieved party, the written explanation shall be accompanied by an oral explanation.

(4) The department shall establish and implement procedures for the making and transmission of complaints to the department by any person alleging violation of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the standards established thereunder. The department shall promptly review each complaint. In the case of a refusal to investigate, the department shall promptly notify the complainant of its refusal and the reasons therefor; and in every other case, the department shall, following investigation, notify the complainant of its investigation and any proposed action.

4. Whenever the department finds upon investigation that there have been violations of the provisions of sections 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards established thereunder by any person licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or 344, RSMo, the department shall forward a report of its findings to the appropriate licensing or examining board for further investigation.

5. Each facility shall maintain a complete record of complaints and grievances made against such facility and a record of the final disposition of the complaints and grievances. Such record shall be open to inspection by representatives of the department during normal business hours.

6. Nothing in this section shall be construed as requiring a resident to exhaust grievance procedures established by the facility or by the department prior to filing a complaint pursuant to section 198.090.

198.093. 1. Any resident or former resident who is deprived of any right created by sections 198.088 and 198.090, or the estate of a former resident so deprived, may file a written complaint within [one hundred eighty days] **two years** of the alleged deprivation or injury with the office of the attorney general describing the facts surrounding the alleged deprivation. A copy of the complaint shall be sent to the department by the attorney general.

2. The attorney general shall review each complaint and may initiate legal action as provided under sections 198.003 to 198.186.

3. If the attorney general fails to initiate a legal action within sixty days of receipt of the complaint, the complainant may, within two hundred forty days of filing the complaint with the attorney general, bring a civil action in an appropriate court against any owner, operator or the agent of any owner or operator to recover actual damages. The court may, in its discretion, award punitive damages which shall be limited to the larger of five hundred dollars or five times the amount of special damages, unless the deprivation complained of is the result of an intentional act or omission causing physical or emotional injury to the resident, and may award to the prevailing party attorney's fees based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper; except that, an attorney who is paid in whole or part from public funds for his **or her** representation in any cause arising under this section shall not be awarded any attorney fees.

4. No owner or operator who pleads and proves as an affirmative defense that he **or she** exercised all care reasonably necessary to prevent the deprivation and injury for which liability is asserted shall be liable under this section.

5. Persons bringing suit to recover against a bond for personal funds pursuant to section 198.096 shall not be required to first file a complaint with the attorney general pursuant to subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to recover on such bond.

6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating, abridging or otherwise limiting the right of any person to bring appropriate legal actions in any court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall any provision of the above-named sections be construed as preventing or discouraging any person from filing a complaint with the department or notifying the department of any alleged deficiency or noncompliance on the part of any facility.

198.345. Nothing in sections 198.200 to 198.350 shall prohibit a nursing home district from establishing and maintaining senior housing within its corporate limits.

198.525. 1. **Except as otherwise provided for in 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 II, intermediate care facilities and skilled nursing facilities attached to acute care hospitals at least twice a year.

2. The provisions of subsection 1 of this section shall apply unless the facility has zero class I violations over an eighteen-month period, in which case the facility shall be inspected annually. The provisions of this subsection shall continue so long as the facility maintains its zero class I violation record.

198.526. 1. **Except as provided for in subsection 3 of this section**, the [division

of aging] **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 if, **during the preceding eighteen-month period**:

(1) The facility has no class I deficiencies or class II violations related to the direct care of residents during an original inspection. A finding of substantial compliance after one or more revisits to an original inspection does not satisfy the requirements of this subdivision;

(2) In the year subsequent to a finding of no class I deficiencies or class II violations related to the direct care of residents pursuant to subdivision (1) of this subsection, the facility has no substantiated complaints involving class I deficiencies or class II violations related to the direct care of residents; and

(3) In the year subsequent to a finding of no class I deficiencies or class II violations related to the direct care of residents pursuant to subdivision (1) of this subsection, 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 who are directly connected with inspections. 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 employment immediately terminated.

5. Notwithstanding any other provision of law to the contrary, the department may inspect any facility at any time. The department may, but is not required, to conduct an inspection in connection with the investigation of any complaint filed against any facility. Federal laws and rules governing surveys of facilities are not affected by the provisions of this or any other provision of state law.

198.531. 1. The [division of aging] **department of health and senior services**, in collaboration with qualified Missouri schools and universities, shall establish an aging-in-place pilot program at a maximum of four selected sites throughout the state which will provide a continuum of care for elders who need long-term care. For purposes of this section, "qualified Missouri schools and universities" means any Missouri school or university which has a school of nursing, a graduate nursing program, or any other similar program or specialized expertise

in the areas of aging, long-term care or health services for the elderly.

2. The pilot program shall:

(1) Deliver a full range of physical and mental health services to residents in the least restrictive environment of choice to reduce the necessity of relocating such residents to other locations as their health care needs change;

(2) Base licensure on services provided rather than on facility type; and

(3) Be established in selected urban, rural and regional sites throughout the state.

3. The directors of the [division of aging and division of medical services] **departments of health and senior services and social services, or their designees**, shall apply for all federal waivers necessary to provide Medicaid reimbursement for health care services received through the aging-in-place pilot program.

4. The [division of aging] **department of health and senior services** shall monitor the pilot program and report to the general assembly, **not later than January 1, 2008**, on the effectiveness of such program, including quality of care, resident satisfaction [and], cost-effectiveness [to include], **and the cost equivalent of unpaid or volunteer labor. Pilot program success and effectiveness shall be used to establish a new licensure category for the provision of aging-in-place services. The department of health and senior services may, for the purpose of implementing and evaluating the effectiveness of the pilot program, grant exceptions to sections 198.003 to 198.186, during the pilot program period if the department has determined that the exception would not potentially jeopardize the health, safety, or welfare of any resident of the aging-in-place pilot program.**

5. Developments authorized by this section shall be exempt from the provisions of sections 197.300 to 197.367, RSMo[, and shall be licensed by the division of aging].

6. **Developments authorized by this section shall, for the duration of the pilot program and continuing thereafter upon the expiration or termination of or withdrawal from the program, be exempt from the provisions of sections 197.300 to 197.366, RSMo, and may continue to be licensed by the department of health and senior services provided such developments continue to meet the standards of licensure established by the department.**

565.186. The department of [social] **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] **incidents of suspected elder abuse** to the appropriate law enforcement agency and prosecutor and shall determine whether protective services are required pursuant to sections 660.250 to 660.295, RSMo.

565.188. 1. When any physician, medical examiner, coroner, dentist, chiropractor,

optometrist, podiatrist, [resident intern,] nurse, **nurse practitioner, physician's assistant**, hospital and clinic personnel engaged in examination, care or treatment of persons, or other health practitioners, psychologists, mental health professional, **pharmacist, physical therapist**, social worker, adult day care center worker, nursing home worker, **or any owner or employee of a facility licensed pursuant to chapter 198, RSMo**, probation or parole officer, **minister**, Christian Science practitioner, peace officer or law enforcement official, **in-home services owner, operator, or employee, employee of the departments of health and senior services, social services, or mental health**, or other person with responsibility for the care of a person sixty years of age or older **who is unable to protect his or her own interests or is unable to meet his or her essential human needs** has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances which would reasonably result in abuse or neglect, he shall immediately report or cause a report to be made to the department in accordance with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

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

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

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

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

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.

630.167. 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 **of** 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, 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;

(4) "Director", director of the department of social services or his designees;

(5) "Eligible adult", a person sixty years of age or older **who is unable to protect his or her own interests or is unable to meet his or her essential human needs** 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.

660.260. Upon receipt of a report, the department shall make a prompt and thorough investigation to determine whether or not an eligible adult is facing a likelihood of serious physical harm and is in need of protective services. The department shall provide for any of the following:

(1) Identification of the eligible adult and determination that the eligible adult is eligible for services;

(2) Evaluation and diagnosis of the needs of eligible adults;

(3) Provision of social casework, counseling or referral to the appropriate local or state authority;

(4) Assistance in locating and receiving alternative living arrangements as necessary;

(5) Assistance in locating and receiving necessary protective services; [or]

(6) Referral to the department of mental health for protective intervention and oversight of clients being served by the department of mental health; or

(7) The coordination and cooperation with other state agencies and public and private agencies in exchange of information and the avoidance of duplication of services.

660.263. 1. Reports made pursuant to sections 660.250 to 660.295 shall be confidential and shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo.

2. Such reports 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 persons referred to, **from, or through** that department;
- (4) Any appropriate law enforcement agency; and
- (5) The eligible adult or [his] **such adult's** legal guardian **or conservator, or any other person designated by the eligible adult.**

3. The name of the reporter shall not be disclosed unless:

- (1) Such reporter specifically authorizes disclosure of his **or her** name; and
- (2) The department determines that disclosure of the name of the reporter is necessary in order to prevent further harm to an eligible adult.

4. Any person who violates the provisions of this section, or who permits or encourages the unauthorized dissemination of information contained in the central registry and in reports and records made pursuant to sections 660.250 to 660.295, shall be guilty of a class A misdemeanor.

5. The department shall maintain a central registry capable of receiving and maintaining reports received in a manner that facilitates rapid access and recall of the information reported, and of subsequent investigations and other relevant information. The department shall electronically record any telephone report of suspected abuse and neglect received by the department and such recorded reports shall be retained by the department for a period of one year after recording.

6. 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.

660.270. When the department receives a report that there is a likelihood of [serious physical harm] **abuse or neglect, as defined in section 660.250**, to an eligible adult and that [he is] **such adult may be** in need of protective services and the department is unable to conduct an investigation because **any person has prevented such investigation, including but not limited to denial of access** to the eligible adult [is barred by any person], the director may petition the appropriate court **to enjoin interference with the investigation or** for a warrant to enter upon the described premises and investigate the report. The application for the **injunction or** warrant shall identify the eligible adult and the facts and circumstances which require the issuance of the **injunction or** warrant. [The director may also seek an order to enjoin the person barring access 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 a likelihood of [serious physical harm and is] **abuse or neglect, as defined in section 660.250, and may be** in need of protective services and the director has been prevented by another person from investigating the report, **including but not limited to**

denial of access to the eligible adult, 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, [intern,] nurse, **nurse practitioner, physician's assistant, hospital and clinic personnel engaged in examination, care, or treatment of persons, or other health practitioners**, medical examiner, **coroner, mental health professional**, social worker, psychologist, minister, Christian Science practitioner, peace officer, **probation or parole officer, law enforcement officer**, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services employee, **adult day care worker**, or employee of the department of social services or of the department of health and senior services or of the department of mental health 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.

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] action** 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. Reports shall be confidential, as provided under section 660.320.

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

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home services client while employed by an in-home services provider agency.

[197.367. Upon application for renewal by any residential care facility I or II which on the effective date of this act has been licensed for more than five years, is licensed for more than fifty beds and fails to maintain for any calendar year its occupancy level above thirty percent of its then licensed beds, the division of aging shall license only fifty beds for such facility.]

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