

FIRST REGULAR SESSION

SENATE BILL NO. 311

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS DOUGHERTY, BRAY, JACOB, COLEMAN, DAYS, KENNEDY,
GOODE, WHEELER AND BLAND.

Read 1st time January 22, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1089S.01I

AN ACT

To repeal sections 197.317, 197.318, 198.018, 198.022, 198.032, 198.036, 198.067, 198.070, 198.090, 198.093, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, and to enact in lieu thereof forty-three 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 197.317, 197.318, 198.018, 198.022, 198.032, 198.036, 198.067, 198.070, 198.090, 198.093, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, are repealed and forty-three new sections enacted in lieu thereof, to be known as sections 187.010, 187.020, 187.024, 187.028, 187.030, 187.032, 187.034, 187.050, 187.080, 187.084, 187.087, 187.090, 187.102, 197.317, 197.318, 197.416, 198.018, 198.019, 198.022, 198.024, 198.031, 198.032, 198.036, 198.067, 198.071, 198.090, 198.093, 198.301, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 210.936, 344.050, 660.050, 660.251, 660.252, 660.270, 660.310, and 660.321, to read as follows:

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

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

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

- (2) "Department", the Missouri department of health and senior services;
- (3) "Director", the director of the department of health and senior services;
- (4) "Eligible adult", a person sixty years of age or older, or an adult with a disability, as defined in section 660.053, RSMo, between the ages of eighteen and fifty-nine who is unable to protect his or her own interests or adequately perform or obtain services which are necessary to meet his or her essential needs;
- (5) "Facility" or "long-term care facility", any residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility;
- (6) "Health care provider", any person who is paid to deliver or purports to deliver any health care, including any employee, agent, or other representative of such person;
- (7) "Home health agency", a public agency or private organization, or a subdivision or subunit of an agency or organization, that provides two or more home health services at the residence of a patient according to a physician's written and signed plan of treatment and is licensed under sections 197.400 to 197.475, RSMo;
- (8) "Home health agency client", a person who is receiving services in his or her place of residence from a home health agency licensed under sections 197.400 to 197.475, RSMo;
- (9) "Home health agency employee", a person employed by a home health agency licensed under sections 197.400 to 197.475, RSMo;
- (10) "Hospice", a coordinated program of palliative and supportive services provided in both home and inpatient settings which provides for physical, psychological, social, and spiritual care for dying persons and their families where services are provided by a medically directed interdisciplinary team of professionals and volunteers and bereavement care is available to the family following the death of the person and is licensed pursuant to sections 197.250 to 197.280, RSMo;
- (11) "Hospital", a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not less than twenty-four consecutive hours in any week of three or more nonrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide for not less than twenty-four consecutive hours in any week medical or nursing care for three or more nonrelated individuals and is licensed pursuant to sections 197.020 to 197.120, RSMo. The term "hospital" does not include convalescent, nursing, shelter or boarding homes as defined in chapter 198, RSMo;
- (12) "In-home services client", an eligible adult who is receiving services in his or her private residence through any in-home services provider agency;
- (13) "In-home services employee", a person employed by an in-home services

provider agency;

(14) "In-home services provider agency", a business entity under contract with the department, or a Medicaid participation agreement that employs persons to deliver any kind of services provided for eligible adults in their private homes;

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

(16) "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;

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

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

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

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

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

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

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

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

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

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

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

187.020. 1. When any physician, dentist, chiropractor, optometrist, podiatrist,

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

2. In addition to those persons required to report pursuant to subsection 1 of this section, any other person who believes or has reasonable cause to believe that a person sixty years of age or older or an eligible adult, a resident of a long-term care facility, or an in-home services or home health agency client has been abused or neglected may report such information to the department.

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

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

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

187.024. 1. If an abuse or neglect report made pursuant to section 187.020 involves a resident of a long-term care facility, the report shall contain, the name and address of the facility, the name of the resident, information regarding the nature of

the abuse or neglect, the name of the complainant, and any other information which may be helpful in an investigation.

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

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

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

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

to a report being made pursuant to this section.

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

7. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed in any facility, hospital, ambulatory surgical center, or by an in-home service provider, home health agency, or hospice and who have been finally determined by the department pursuant to section 187.080 to have knowingly or recklessly engaged in conduct which results in abuse, neglect or financial exploitation of an eligible adult who came to be known to the person, directly or indirectly, while employed in any facility, hospital, or ambulatory surgical center or while employed by an in-home service provider, home health service provider, or hospice. With respect to all aspects of the abuse, neglect, or financial exploitation of the victim other than the conduct of the person, no culpable mental state is required. A person acts "knowingly" with respect to the person's conduct when the person is aware of the nature of the person's conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

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

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

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

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

4. If the alleged perpetrator of abuse or neglect of an eligible adult not residing in a facility is an in-home services or home health agency employee, and such employee has been determined guilty by a court of competent jurisdiction, and if the supervising in-home service provider or home health agency fails to report a known abuse by such employee to the department, the department may impose an administrative penalty of one thousand dollars per violation against such supervising in-home service provider or home health agency. The department shall establish a quality assurance and supervision process for clients. Such process shall require in-home service provider agencies and home health agencies to verify compliance with program standards and verify the accuracy of records kept by in-home service employees and home health agency employees.

5. Reports shall be confidential unless determined by a court of competent jurisdiction to the contrary at the court's discretion, or upon a request for an expedited hearing. Such information in subsections 1 and 3 of this section shall be reported to any person authorized pursuant to paragraph (h) of subdivision (6) of subsection 1 of section 198.088, RSMo, any individual with a durable power of attorney allowing such individual the receipt of such information, or any legal guardianship for the eligible adult not residing in a facility who is the subject of the abuse or neglect unless such person is the alleged perpetrator of the abuse or neglect or if the eligible adult not residing in a facility objects.

6. No person, including any person who directs or exercises any authority in an in-home services provider agency or home health agency, shall harass, dismiss, or

retaliate against an eligible adult not residing in a facility or an in-home services employee or home health agency employee because the eligible adult, employee, or any member of his or her family has made a report of any violation or suspected violation of laws, standards, or regulations applying to the in-home services provider agency or any in-home services employee, or the home health agency or any home health agency employee which the eligible adult, employee, or family member thereof has reasonable cause to believe has been committed or has occurred.

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

8. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed by an in-home service provider agency or home health agency and who have been finally determined by the department pursuant to section 187.080 to have knowingly or recklessly engaged in conduct which results in abuse, neglect, or financial exploitation of an eligible adult not residing in a facility who came to be known to the person, directly or indirectly, while employed by an in-home service provider agency or home health agency. With respect to all aspects of the abuse, neglect, or financial exploitation of the victim other than the conduct of the person, no culpable mental state is required. A person acts "knowingly" with respect to the person's conduct when the person is aware of the nature of the person's conduct. A person acts "recklessly" when the person consciously disregards a substantial and unjustifiable risk that the person's conduct will result in serious physical injury and such disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

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

2. The department and law enforcement agencies shall require training and cross-training of all investigatory personnel and other persons as deemed necessary regarding the proper handling of cases involving elder abuse. All noninvestigatory personnel and volunteers for local area agencies on aging shall be instructed on identification and reporting procedures for abuse and neglect to ensure that such personnel and volunteers are able to recognize potential cases of abuse or neglect. Nothing in this subsection shall be construed to allow noninvestigatory personnel and volunteers to act in an investigatory capacity in investigations of elder

abuse or neglect. The department, in cooperation with law enforcement agencies, shall, by rule, develop a checklist for department and law enforcement personnel to follow when investigating possible elder abuse.

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

187.032. 1. Any statement by a person sixty years of age or older, or an adult with a disability, as defined in section 660.053, RSMo, related to an offense, crime or other misconduct toward or observed by such person shall be admissible into evidence in criminal, civil, and administrative proceedings in this state as substantive evidence to prove the truth of the matter asserted if:

(1) The person is unavailable as a witness at the time of the criminal, civil, or administrative proceeding due to the person's physical or mental condition, including but not limited to the elderly or disabled person's inability at the time of the proceeding to recall the offense, crime, or misconduct or to recall having made a statement; and

(2) The court or administrative tribunal finds, in a hearing conducted outside the presence of the jury, if applicable to the proceeding, that the time, content, and circumstances of the statement provide sufficient indicia of reliability and the declarant was competent.

2. A statement shall not be admitted pursuant to this section unless the party offering the statement makes known to the other party or the other party's counsel his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the other party or the other party's counsel with a fair opportunity to prepare to meet the statement. Providing a statement to the other party or the other party's counsel at least seven days prior to any proceeding in which the statement is sought to be introduced shall be prima facie evidence that the other party or the other party's counsel has a fair opportunity to prepare to meet the statement.

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

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

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

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

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

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

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

6. Reports shall be confidential unless determined by a court of competent jurisdiction to the contrary at the court's discretion, or upon a request for an expedited hearing. Such information in subsections 3 and 6 of this section shall be reported to any person authorized pursuant to paragraph (h) of subdivision (6) of subsection 1 of section 198.088, RSMo, any individual with a durable power of attorney allowing such individual the receipt of such information, or any person with legal guardianship for the eligible adult not residing in a facility who is the subject of the misappropriation or falsification unless such person is the alleged perpetrator of the misappropriation or falsification, or if the eligible adult not residing in a facility objects.

7. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying,

except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

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

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

187.080. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, such person shall be notified in writing mailed to the person's last known address that:

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

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, he or she may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

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

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

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

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

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

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

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

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

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

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

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

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

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

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

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

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

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

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

(5) Is an entity licensed pursuant to chapter 197, RSMo;

The department shall inform any person listed above who inquires of the department whether a particular name is on the list. The department may require that the request be made in writing.

12. No person, corporation, or association who receives an employee disqualification list pursuant to subsection 11 of this section shall knowingly employ any person whom the employer has confirmed to be on the employee disqualification list. Any such person, corporation, or association, who declines to employ or terminates a person whose name is listed on the employee disqualification list pursuant to this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any employer who is required to discharge an employee because the employee was placed on a disqualification list maintained by the department of health and senior services after the date of hire shall not be charged for unemployment

insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.

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

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

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

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

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

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

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

(3) Make an inquiry to the department of health and senior services on whether the person is listed on the family care safety registry as provided in section 210.903, RSMo.

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

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

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

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

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

6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and:

(1) The person has been convicted of, pled guilty to, or nolo contendere in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be:

(a) A felony stealing offense;

(b) Child abuse or neglect;

(c) A violation of subsection 3 of section 187.020;

(d) A felony violation of chapter 198, 334, 565, 566, 568, 569, or 573, RSMo;

(e) A violation of section 565.184, RSMo; or

(f) A violation of section 568.020, RSMo;

(2) The person or the person's foster care license has been refused, suspended, or revoked pursuant to section 210.496, RSMo, if such refusal, suspension, or revocation is related to care or protection of children; or

(3) The person is disqualified for employment by the department of mental health pursuant to section 630.170, RSMo.

7. A provider may use a private investigatory agency rather than the highway patrol to conduct a criminal records review check, and alternatively, the applicant shall pay such agency the fees agreed upon by the provider and such agency.

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

9. Any provider that demonstrates a pattern of violation of this section shall be subject to the civil penalties established in section 198.067, RSMo, regardless of whether such violations have been or are being corrected. For purposes of this section, a "pattern of violation" shall be established if a facility, at any time within a twelve-month period, receives two or more citations of knowing violations of this section by the department. The twelve-month period shall begin on the date of the first citation and shall end twelve months thereafter.

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

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

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

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

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

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

(6) Release of a name is requested by the division of family services within the department of social services, or its successor agency, for the purpose of licensure pursuant to chapter 210, RSMo.

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

187.090. The director or any person designated by the director, may require

answers to written interrogatories and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant and material to any inspection or investigation. Failure to comply with any request of the department in connection with the investigation and inspection is a ground for refusal to issue a license or contract, or for the immediate suspension or revocation of a license or contract.

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

197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:

(1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;

(2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

(3) The reallocation of intermediate care facility or skilled nursing facility beds of existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds. However, after January 1, [2003] **2007**, nothing in this section shall prohibit the Missouri health facilities review committee from issuing a certificate of need for additional beds in existing health care facilities or for new beds in new health care facilities or for the reallocation of licensed beds, provided that no construction shall begin prior to [January 1, 2004] **July 1, 2007**. The provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of this section.

2. The health facilities review committee shall utilize demographic data from the office of social and economic data analysis, or its successor organization, at the University of Missouri as their source of information in considering applications for new institutional long-term care facilities.

197.318. 1. The provisions of section 197.317 shall not apply to a residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility only where the department of [social] **health and senior** services has first determined that there presently exists a need for additional beds of that classification because the average occupancy of all

licensed and available residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility beds exceeds ninety percent for at least four consecutive calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise appears to qualify for a certificate of need. The department's certification that there is no need for additional beds shall serve as the final determination and decision of the committee. In determining ninety percent occupancy, residential care facility I and II shall be one separate classification and intermediate care and skilled nursing facilities are another separate classification.

2. The Missouri health facilities review committee may, for any facility certified to it by the department, consider the predominant ethnic or religious composition of the residents to be served by that facility in considering whether to grant a certificate of need.

3. There shall be no expenditure minimum for facilities, beds, or services referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire January 1, [2003] **2007**.

4. As used in this section, the term "licensed and available" means beds which are actually in place and for which a license has been issued.

5. The provisions of section 197.317 shall not apply to any facility where at least ninety-five percent of the patients require diets meeting the dietary standards defined by section 196.165, RSMo.

6. The committee shall review all letters of intent and applications for long-term care hospital beds meeting the requirements described in 42 CFR, Section 412.23(e) under its criteria and standards for long-term care beds.

7. Sections 197.300 to 197.366 shall not be construed to apply to litigation pending in state court on or before April 1, 1996, in which the Missouri health facilities review committee is a defendant in an action concerning the application of sections 197.300 to 197.366 to long-term care hospital beds meeting the requirements described in 42 CFR, Section 412.23(e).

8. Notwithstanding any other provision of this chapter to the contrary:

(1) A facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed capacity by:

(a) Submitting a letter of intent to expand to the [division of aging] **department of health and senior services** and the health facilities review committee;

(b) Certification from the [division of aging] **department of health and senior services** that the facility:

a. Has no patient care class I deficiencies within the last eighteen months; and

b. Has maintained a ninety-percent average occupancy rate for the previous six quarters;

(c) Has made an effort to purchase beds for eighteen months following the date the letter of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For purposes of

this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to purchase beds from another licensed facility in the same licensure category; and

(d) If an agreement is reached by the selling and purchasing entities, the health facilities review committee shall issue a certificate of need for the expansion of the purchaser facility upon surrender of the seller's license; or

(e) If no agreement is reached by the selling and purchasing entities, the health facilities review committee shall permit an expansion for:

a. A facility with more than forty beds may expand its licensed bed capacity within the same licensure category by twenty-five percent or thirty beds, whichever is greater, if that same licensure category in such facility has experienced an average occupancy of ninety-three percent or greater over the previous six quarters;

b. A facility with fewer than forty beds may expand its licensed bed capacity within the same licensure category by twenty-five percent or ten beds, whichever is greater, if that same licensure category in such facility has experienced an average occupancy of ninety-two percent or greater over the previous six quarters;

c. A facility adding beds pursuant to subparagraphs a. or b. of this paragraph shall not expand by more than fifty percent of its then licensed bed capacity in the qualifying licensure category;

(2) Any beds sold shall, for five years from the date of relicensure by the purchaser, remain unlicensed and unused for any long-term care service in the selling facility, whether they do or do not require a license;

(3) The beds purchased shall, for two years from the date of purchase, remain in the bed inventory attributed to the selling facility and be considered by the department of [social] **health and senior** services as licensed and available for purposes of this section;

(4) Any residential care facility licensed pursuant to chapter 198, RSMo, may relocate any portion of such facility's current licensed beds to any other facility to be licensed within the same licensure category if both facilities are under the same licensure ownership or control, and are located within six miles of each other;

(5) A facility licensed pursuant to chapter 198, RSMo, may transfer or sell individual long-term care licensed beds to facilities qualifying pursuant to paragraphs (a) and (b) of subdivision (1) of this subsection. Any facility which transfers or sells licensed beds shall not expand its licensed bed capacity in that licensure category for a period of five years from the date the licensure is relinquished.

9. Any existing licensed and operating health care facility offering long-term care services may replace one-half of its licensed beds at the same site or a site not more than thirty miles from its current location if, for at least the most recent four consecutive calendar quarters, the facility operates only fifty percent of its then licensed capacity with every resident residing in a private

room. In such case:

(1) The facility shall report to the [division of aging] **department of health and senior services** vacant beds as unavailable for occupancy for at least the most recent four consecutive calendar quarters;

(2) The replacement beds shall be built to private room specifications and only used for single occupancy; and

(3) The existing facility and proposed facility shall have the same owner or owners, regardless of corporate or business structure, and such owner or owners shall stipulate in writing that the existing facility beds to be replaced will not later be used to provide long-term care services. If the facility is being operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

10. Nothing in this section shall prohibit a health care facility licensed pursuant to chapter 198, RSMo, from being replaced in its entirety within fifteen miles of its existing site so long as the existing facility and proposed or replacement facility have the same owner or owners regardless of corporate or business structure and the health care facility being replaced remains unlicensed and unused for any long-term care services whether they do or do not require a license from the date of licensure of the replacement facility.

197.416. When the department of health and senior services issues a license for or renews the existing license of a home health agency, the department of health and senior services shall:

(1) **Require all home health agency operators and owners, including part owners, to include in the application for licensure or renewal of licensure a list of all home health agencies, whether located in this state or another state, for which the operators and owners currently have or have had a financial interest, excluding the home health agency for which licensure or renewal of licensure is sought;**

(2) **Determine and consider the compliance history of the home health agencies listed in the application pursuant to subdivision (1) of this section as home health agencies for which the owners and operators have or have had a financial interest. Based on the review of such compliance history, the department may deny licensure or renewal of licensure for the facility;**

(3) **Consider the compliance history of the operator of the home health agency and the home health agency for which licensure or renewal of licensure is sought. Based on the review of such compliance history, the department may deny licensure or renewal of licensure for the facility; and**

(4) **Include and consider any home health agency responses to survey findings in the official review made by the department.**

198.018. 1. Applications for a license shall be made to the department by the operator

upon such forms and including such information and documents as the department may reasonably require by rule or regulation for the purposes of administering sections 198.003 to 198.186, section 198.200, and sections 208.030 and 208.159, RSMo.

2. The applicant shall submit an affidavit under oath that all documents required by the department to be filed pursuant to this section are true and correct to the best of his knowledge and belief, that the statements contained in the application are true and correct to the best of his knowledge and belief, and that all required documents are either included with the application or are currently on file with the department.

3. **The application shall contain an affidavit submitted under oath by the chairman or president of the board of trustees, owner, or one partner of a partnership and the administrator affirming that he or she, having exercised due diligence in inquiring and directly observing the condition and operation of the facility, assures that such facility is in and will remain in substantial compliance with all state and federal laws and regulations. An amended affirmation shall be submitted to the department within thirty days of any change of administrator.**

4. The application shall be accompanied by a license fee in an amount established by the department. The fee established by the department shall not exceed six hundred dollars, and shall be a graduated fee based on the licensed capacity of the applicant and the duration of the license. A fee of not more than fifty dollars shall be charged for any amendments to a license initiated by an applicant. In addition, facilities certified to participate in the Medicaid or Medicare programs shall pay a certification fee of up to one thousand dollars annually, payable on or before October first of each year. The amount remitted for the license fee, fee for amendments to a license, or certification fee shall be deposited in the state treasury to the credit of the "Nursing Facility Quality of Care Fund", which is hereby created. All investment earnings of the nursing facility quality of care fund shall be credited to such fund. All moneys in the nursing facility quality of care fund shall, upon appropriation, be used by the division of aging for conducting inspections and surveys, and providing training and technical assistance to facilities licensed under the provisions of this chapter. The unexpended balance in the nursing facility quality of care fund at the end of the biennium is exempt from the provisions of sections 33.080, RSMo. The unexpended balance in the nursing facility quality of care fund shall not revert to the general revenue fund, but shall accumulate in the nursing facility quality of care fund from year to year.

[4.] 5. Within ten working days of the effective date of any document that replaces, succeeds, or amends any of the documents required by the department to be filed pursuant to this section, an operator shall file with the department a certified copy of such document. If the operator knowingly fails to file a required document or provide any information amending any document within the time provided for in this section, a circuit court may, upon application of

the department or the attorney general, assess a penalty of up to fifty dollars per document for each day past the required date of filing.

[5.] **6.** If an operator fails to file documents or amendments to documents as required pursuant to this section and such failure is part of a pattern or practice of concealment, such failure shall be sufficient grounds for revocation of a license or disapproval of an application for a license.

[6.] **7.** Any facility defined in subdivision (8), (15), (16) or (17) of section 198.006 that is licensed by the state of Missouri pursuant to the provisions of section 198.015 may not be licensed, certified or registered by any other political subdivision of the state of Missouri whether or not it has taxing power, provided, however, that nothing in this subsection shall prohibit a county or city, otherwise empowered under law, to inspect such facility for compliance with local ordinances of food service or fire safety.

198.019. When the department of health and senior services issues a license for or renews the existing license of a facility, the department shall:

(1) Require all facility operators and owners, including part owners, to include in the application for licensure or renewal of licensure a list of all long-term care facilities, whether located in this state or another state, for which the operators and owners currently have or have had a financial interest, excluding the facility for which licensure or renewal of licensure is sought;

(2) Determine and consider the compliance history of the facilities listed in the application pursuant to subdivision (1) of this section as facilities for which the owners and operators have or have had a financial interest. The department, based on the review of such compliance history, may deny licensure or renewal of licensure for the facility;

(3) Consider the compliance history of the operator of the facility and the facility for which licensure or renewal of licensure is sought. The department, based on the review of such compliance history, may deny licensure or renewal of licensure for the facility; and

(4) Include and consider any facility responses to survey findings in the official review made by the department.

198.022. 1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

(1) The statements in the application are true and correct;

(2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;

(3) The applicant has the financial capacity to operate the facility;

(4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

(5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory;

(6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;

(7) All fees due to the state have been paid.

2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. **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.

198.024. The department shall promulgate rules to require facilities to submit information regarding their actual staffing and retention patterns. On or before July 1, 2004, the department shall make such information available to the public on its website.

198.031. Every residential care facility I, residential care facility II, intermediate

care facility and skilled nursing facility shall post the most recent inspection report in a conspicuous location in a facility.

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

- (1) The department or any person or agency designated by the department;
- (2) The attorney general, **to perform his or her constitutional or statutory duties;**
- (3) The department of mental health for residents placed through that department, **to perform its constitutional or statutory duties;**
- (4) Any appropriate law enforcement agency, **to perform its constitutional or statutory duties;**
- (5) The resident, ~~[his] the resident's guardian or conservator~~, or any other person designated by the resident; ~~[and]~~
- (6) **The department of social services for individuals who receive Medicaid benefits, to perform its constitutional or statutory duties; and**
- (7) Appropriate committees of the general assembly and the state auditor, but only to the extent of financial records which the operator is required to maintain pursuant to sections 198.088 and 198.090.

2. Inspection reports and ~~written reports~~ of investigations of complaints, of substantiated reports of abuse and neglect received in accordance with ~~[section 198.070]~~ **sections 187.020 to 187.028, RSMo,** and complaints received by the department relating to the quality of care of facility residents, shall be accessible to the public for examination and copying, provided that such reports are disclosed in a manner which does not identify the complainant or any particular resident. Records and reports shall clearly show what steps the department and the institution are taking to resolve problems indicated in said inspections, reports and complaints. **Unsubstantiated inspection reports, and written reports of investigations of 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 failed or refused to comply with class III standards as established by the department pursuant to section 198.085, where the aggregate effect of such noncompliances presents either an imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) 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. In addition to the grounds for revocation of licensure set forth in subsection 1 of this section, the department may revoke a license of an operator for any reason for which the department may deny an application for licensure pursuant to section 198.022.

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

198.067. 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] seventy-five** thousand dollars for each day that the violations existed or continue to exist, **regardless of whether they are or were 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] five thousand** dollars nor more than **[one] ten** thousand dollars;

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

(3) For each violation of a class III standard, not less than **[fifteen] one hundred fifty** dollars nor more than **[one hundred fifty] five hundred** 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 the term "violation" shall mean a breach of a specific state or federal standard or statute which remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code. A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

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

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

6. **Twenty-five percent of the** penalties collected pursuant to this section shall be deposited in the [division of aging] elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such penalties shall not be considered a charitable contribution for tax purposes. **The remaining seventy-five percent of the penalties collected pursuant to this section shall be deposited into the nursing facility quality care fund established in section 198.418, RSMo.**

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 **not** 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] **thousand** dollars multiplied by the number of beds licensed to the facility, up to a maximum of [ten] **seventy-five** thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to this section shall be incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section, "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

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

12. **In accordance with the provisions of this section, the general assembly specifically intends for the civil penalties in this section to be imposed in cases where there has been more than one violation or a pattern of violations, regardless of any subsequent correction of the violation by a facility.**

198.071. 1. The administrator of a residential care facility I, a residential care facility II, an intermediate care facility, or a skilled nursing facility shall contact the local coroner immediately upon the death of any resident of the facility. The administrator shall provide the coroner with an outline of the circumstances regarding the death of such resident. A written report containing the information provided to the local coroner shall be submitted to the department within one business day of the death of the resident.

2. Hospitals licensed pursuant to chapter 197, RSMo, shall immediately notify the administrator of a residential care facility I, a residential care facility II, an intermediate care facility, or a skilled nursing facility upon the death of a resident that has been transferred to the hospital from that facility for the purposes of receiving health care in an emergency room setting or an inpatient unit of the hospital. The administrator of the transferring residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility shall then immediately notify the coroner and provide the coroner with an outline of the circumstances leading up to the transfer of the resident to the hospital. Upon request, the hospital shall provide the coroner an outline of the circumstances regarding the death of such resident. A written report containing the information provided to the local coroner shall be submitted to the department within one business day of the death of the resident by the administrator of the residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility.

3. The department shall maintain statistics on all reports compiled pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

of these funds; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

198.093. 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.

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

198.525. **Except as otherwise provided 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.

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] **under this chapter** 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:**

(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. **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.**

198.532. Complaints filed with the [division of aging] **department of health and senior services** against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to [section 198.070] **sections**

187.020 to 187.028, RSMo. The [division] **department** shall provide the results of all investigations in accordance with section [660.320] **187.087, RSMo.** The [division] **department** shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the [division of aging] **department of health and senior services** and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the [division of aging] **department.**

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

2. To affect expenditures, quality of, provider equity in and access to Medicaid nursing home services, the patient care expenditure component of the nursing facility Medicaid per diem rate shall include salaries for physical therapy, occupational therapy, speech therapy, and inhalation therapy, and supplies and contracted services for physical therapy, occupational therapy, speech therapy, and inhalation therapy in addition to those expenditures recognized in the code of state regulations promulgated by the division of medical services within the department of social services. The additional expenditures listed in this subsection to the current patient care expenditure component shall be effective upon appropriation of moneys for rebasing the nursing facility Medicaid per diem rates.

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

division may normalize costs deemed to be excessive in a given year when compared over a greater period of time.

210.903. 1. To protect children, the elderly, and disabled individuals in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health and senior services a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers', elder-care workers', and personal-care workers' background and on child-care, elder-care and personal-care providers through:

(1) The patrol's criminal record check system pursuant to section 43.540, RSMo, including state and national information, to the extent possible;

(2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section 570.145, RSMo;

(3) The [division of aging's] **department of health and senior services** employee disqualification list pursuant to section [660.315] **187.080**, RSMo;

(4) As of January 1, 2003, the department of mental health's employee disqualification registry;

(5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to section 210.496;

(6) Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259; and

(7) Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo.

210.909. 1. Upon submission of a completed registration form by a child-care worker, elder-care worker or personal-care attendant, the department shall:

(1) Determine if a probable cause finding of child abuse or neglect involving the applicant has been recorded pursuant to sections 210.109 to 210.183 and, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;

(2) Determine if the applicant has been refused licensure or has experienced involuntary licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section [660.315] **187.080**, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

(5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether

the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of sentence to a charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573, 575 and 578, RSMo; and

(6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any convictions, employee disqualification listings, registry listings, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

210.933. For any elder-care worker listed in the registry or who has submitted the registration form as required by sections 210.900 to 210.936, an elder-care provider may access the registry in lieu of the requirements established pursuant to section [660.315] **187.080**, RSMo, or to subsections 3, 4 and 5 of section [660.317] **187.084**, RSMo.

210.936. For purposes of providing background information pursuant to sections 210.900 to 210.936, reports and related information pursuant to sections [198.070 and] **187.020 to 187.028, RSMo, section** 198.090, RSMo, sections 210.109 to 210.183, **and** section 630.170, RSMo, [and sections 660.300 to 660.317, RSMo,] shall be deemed public records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. No license may be suspended or revoked and no application for renewal of a license may be denied [under] **pursuant to** this section until the licensee has been afforded an opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

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

660.050. 1. The "Division of Aging" is hereby transferred from the department of social services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974. The division, **or its successor divisions**, shall aid and assist the elderly and low-income [handicapped] **disabled** adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The division, **or its successor divisions**, shall regulate adult long-term care facilities pursuant to the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

2. In addition to its duties and responsibilities enumerated pursuant to other provisions of law, the division, **or its successor divisions**, shall:

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

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

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

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

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

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

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

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

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

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

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

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

(13) Receive and disburse all federal and state funds allocated to the division and solicit, accept, and administer grants, including federal grants, or gifts made to the division or to the state for the benefit of elderly persons in this state;

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

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

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

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

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

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

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

(21) Provide transportation services, home-delivered and congregate meals, in-home services, counseling and other services to the elderly and low-income [handicapped] **disabled** adults as designated in the Social Services Block Grant Report, through contract with other

agencies, and shall monitor such agencies to ensure that services contracted for are delivered and meet standards of quality set by the division;

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

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

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

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

6. The division may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in this section and sections [198.070 and] **187.020 to 187.034, 187.050 and 187.080 to 187.087, RSMo, section 198.090, RSMo, and [sections 660.250 and 660.300 to 660.320] section 660.250.** 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, 2001, shall be invalid and void.

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

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

(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;

(2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

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

660.251. 1. No legally recognized privilege, except the privileges provided by subdivisions (3) and (4) of section 491.060, RSMo, and section 660.605, shall exempt a person from the reporting requirements of section 187.020 or 187.050, RSMo, sections 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person to refuse to cooperate fully with or refuse access to records by the department of health and senior services in any of its investigations or activities initiated pursuant to section

187.020 or 187.050, RSMo, sections 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person to refuse to give or receive evidence in any judicial proceeding relating to the likelihood of harm to an eligible adult as defined in section 187.010, RSMo, or section 660.250, or to refuse to give or receive evidence in any judicial proceeding relating to any of the investigations of activities initiated pursuant to section 187.020 or 187.050, RSMo, sections 187.080 to 187.087, RSMo, or sections 660.250 to 660.295.

2. Notwithstanding any other provision of law to the contrary, in any investigation conducted or action brought by the department of health and senior services pursuant to any chapter relating to the care and protection of an eligible adult, the department and any of its personnel shall have access to all financial records, medical records, mental health records, and judicial records, criminal or civil, whether or not available to the general public of any such eligible adult regardless of the institution, facility or entity in possession of such records. Further, the department shall have access to all financial records, medical records, mental health records, and judicial records, criminal or civil, whether or not available to the general public of any person alleged to have abused, neglected, or financially exploited the eligible adult or resident. Medical records relating to the person alleged to have abused, neglected, or financially exploited the eligible adult shall be limited to those records which relate to the misconduct allegedly committed. Any records pursuant to this subsection shall not be deemed public records and shall not be subject to the provisions of section 198.180, RSMo, or chapter 610, RSMo.

3. Any entity that has received a request from the department related to an investigation or inspection shall provide the requested information immediately and no later than seven working days of the receipt of the request. The director or the director's designee may require answers to written interrogatories and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant and material to any inspection or investigation. Failure to comply with any request of the department in connection with the investigation and inspection is a ground for refusal to issue a license or contract, or for the suspension or revocation of a license or contract.

4. Any person or entity which provides documents pursuant to this section shall, upon request by the department, provide a business record affidavit with respect to those records as set forth in section 490.692, RSMo.

660.252. All Medicaid participation agreements entered into between the department of health and senior services and in-home service provider agencies shall include, as part of the initial aide training requirement, training on abuse and neglect

identification, prevention and reporting, which shall be successfully completed prior to unsupervised contact with clients. If the provider agency serves patients with Alzheimer's disease or related dementia, the agency shall include as part of the initial aide requirement training on care of Alzheimer's patients. The department shall prescribe by rule the curriculum for the training.

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

660.310. 1. **Notwithstanding any other provision of law, if the department of health and senior services proposes to deny, suspend, place on probation, or terminate an in-home services provider agency contract, the department of health and senior services shall serve upon the applicant or contractor written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for such action, the date the action will become effective, and a statement that the applicant or contractor shall have thirty days from the date of mailing or delivery of the notice to file a complaint requesting a hearing before the administrative hearing commission. The administrative hearing commission may consolidate an applicant's or contractor's complaint with any proceeding before the administrative hearing commission filed by such contractor or applicant pursuant to subsection 3 of section 208.156, RSMo, involving a common question of law or fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which the department has denied a contract to an in-home services provider agency, the administrative hearing commission shall conduct a hearing to determine the underlying basis for**

such denial. However, in the event that the administrative hearing commission finds that the contract denial is supported by the facts and the law, the case need not be returned to the department. The administrative hearing commission's decision shall constitute affirmation of the department's contract denial.

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

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

4. Stays granted to contractors by the administrative hearing commission shall, as a condition of the stay, require at a minimum that the contractor under the stay operate under the same contractual requirements and regulations as are in effect, from time to time, as are applicable to all other contractors in the program.

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

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

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

660.321. Notwithstanding any other provision of law, the department shall not

disclose personally identifiable medical, social, personal, or financial records of any eligible adult being served by the division of senior services except when disclosed in a manner that does not identify the eligible adult, or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible without court order for examination and copying only to the following persons or offices, or to their designees:

- (1) The department or any person or agency designated by the department for such purposes as the department may determine;
- (2) The attorney general, to perform his or her constitutional or statutory duties;
- (3) The department of mental health for residents placed through that department, to perform its constitutional or statutory duties;
- (4) Any appropriate law enforcement agency, to perform its constitutional or statutory duties;
- (5) The eligible adult client, or his or her legal guardian; and
- (6) The department of social services for individuals who receive Medicaid benefits, to perform its constitutional or statutory duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Evidence of prior convictions of false reporting shall be heard by the court, out

of the hearing of the jury, prior to the submission of the case to the jury, and the court shall determine the existence of the prior convictions.]

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

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

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

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

[660.300. 1. Beginning January 1, 1993, when any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services owner, in-home services operator, in-home services employee, or employee of the department of social services or of the department of health 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 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.]

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

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

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

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

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

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

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

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

9. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or employee because he or any member of his family has made a report of any violation or

suspected violation of laws, ordinances or regulations applying to the in-home services provider agency or any in-home services employee which he has reasonable cause to believe has been committed or has occurred.

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

[660.315. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his last known address that:

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

(2) His name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) His rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or his designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, he may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

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

5. Any hearing shall be conducted in the county of the person's residence by the director of the division of aging or his designee. The provisions of chapter 536, RSMo, for a contested case except those provisions or amendments which are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights

and duties of the parties involved. The person appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

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

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

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

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

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

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

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

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

(5) Any mitigating circumstances; and

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

10. The removal of any person's name from the list under this section shall not

prevent the director from keeping records of all acts finally determined to have occurred under this section.

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

- (1) Is licensed as an operator under chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;
- (4) Is approved by the department to issue certificates for nursing assistants training; or

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

12. No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

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

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

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; or

- (4) Is an entity licensed pursuant to chapter 197, RSMo;
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.

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

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

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

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

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

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

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

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

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

6. An applicant who knowingly fails to disclose his criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires a person to have contact with patients or residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any other state or has been found guilty of a crime, which if

committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

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

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

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

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

(1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;

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

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

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

(6) Release of a name is requested by the division of family services for the purpose of licensure under chapter 210, RSMo.]