

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 671
AN ACT

To repeal sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, and to enact in lieu thereof eight new sections relating to protection of vulnerable persons, with penalty provisions.

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

Section A. Sections 191.900, 191.905, 208.909, 565.184, 2 and 630.155, RSMo, are repealed and eight new sections enacted 3 in lieu thereof, to be known as sections 191.900, 191.905, 4 191.1400, 191.2290, 208.909, 565.184, 630.155, and 630.202, to 5 read as follows:

191.900. As used in sections 191.900 to 191.910, the 2 following terms mean:

3 (1) "Abuse", the infliction of physical, sexual or 4 emotional harm or injury. "Abuse" includes the taking, 5 obtaining, using, transferring, concealing, appropriating or 6 taking possession of property of another person without such 7 person's consent;

8 (2) "Claim", any attempt to cause a health care payer 9 to make a health care payment;

10 (3) "False", wholly or partially untrue. A false 11 statement or false representation of a material fact means 12 the failure to reveal material facts in a manner which is 13 intended to deceive a health care payer with respect to a 14 claim;

15 (4) "Health care", any service, assistance, care, 16 product, device or thing provided pursuant to a medical

17 assistance program, or for which payment is requested or
18 received, in whole or part, pursuant to a medical assistance
19 program;

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

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

27 (7) "Health care provider", any person delivering, or
28 purporting to deliver, any health care, and including any
29 employee, agent or other representative of such a person,
30 and further including any employee, representative, or
31 subcontractor of the state of Missouri delivering,
32 purporting to deliver, or arranging for the delivery of any
33 health care;

34 (8) "Knowing" and "knowingly", that a person, with
35 respect to information:

36 (a) Has actual knowledge of the information;

37 (b) Acts in deliberate ignorance of the truth or
38 falsity of the information; or

39 (c) Acts in reckless disregard of the truth or falsity
40 of the information.

41 Use of the terms knowing or knowingly shall be construed to
42 include the term "intentionally", which means that a person,
43 with respect to information, intended to act in violation of
44 the law;

45 (9) "Medical assistance program", MO HealthNet, or any
46 program to provide or finance health care to participants
47 which is established pursuant to title 42 of the United
48 States Code, any successor federal health insurance program,
49 or a waiver granted thereunder. A medical assistance

50 program may be funded either solely by state funds or by
51 state and federal funds jointly. The term "medical
52 assistance program" shall include the medical assistance
53 program provided by section 208.151, et seq., and any state
54 agency or agencies administering all or any part of such a
55 program;

56 (10) "Neglect", the failure to provide to a person
57 receiving health care the care, goods, or services that are
58 reasonable and necessary to maintain the physical and mental
59 health of such person when such failure presents either an
60 imminent danger to the health, safety, or welfare of the
61 person or a substantial probability that death or serious
62 physical harm would result;

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

191.905. 1. No health care provider shall knowingly
2 make or cause to be made a false statement or false
3 representation of a material fact in order to receive a
4 health care payment, including but not limited to:

5 (1) Knowingly presenting to a health care payer a
6 claim for a health care payment that falsely represents that
7 the health care for which the health care payment is claimed
8 was medically necessary, if in fact it was not;

9 (2) Knowingly concealing the occurrence of any event
10 affecting an initial or continued right under a medical
11 assistance program to have a health care payment made by a
12 health care payer for providing health care;

13 (3) Knowingly concealing or failing to disclose any
14 information with the intent to obtain a health care payment
15 to which the health care provider or any other health care
16 provider is not entitled, or to obtain a health care payment
17 in an amount greater than that which the health care
18 provider or any other health care provider is entitled;

19 (4) Knowingly presenting a claim to a health care
20 payer that falsely indicates that any particular health care
21 was provided to a person or persons, if in fact health care
22 of lesser value than that described in the claim was
23 provided.

24 2. No person shall knowingly solicit or receive any
25 remuneration, including any kickback, bribe, or rebate,
26 directly or indirectly, overtly or covertly, in cash or in
27 kind in return for:

28 (1) Referring another person to a health care provider
29 for the furnishing or arranging for the furnishing of any
30 health care; or

31 (2) Purchasing, leasing, ordering or arranging for or
32 recommending purchasing, leasing or ordering any health care.

33 3. No person shall knowingly offer or pay any
34 remuneration, including any kickback, bribe, or rebate,
35 directly or indirectly, overtly or covertly, in cash or in
36 kind, to any person to induce such person to refer another
37 person to a health care provider for the furnishing or
38 arranging for the furnishing of any health care.

39 4. Subsections 2 and 3 of this section shall not apply
40 to a discount or other reduction in price obtained by a
41 health care provider if the reduction in price is properly
42 disclosed and appropriately reflected in the claim made by
43 the health care provider to the health care payer, or any
44 amount paid by an employer to an employee for employment in
45 the provision of health care.

46 5. Exceptions to the provisions of subsections 2 and 3
47 of this section shall be provided for as authorized in 42
48 U.S.C. Section 1320a-7b(3)(E), as may be from time to time
49 amended, and regulations promulgated pursuant thereto.

50 6. No person shall knowingly abuse or neglect a person
51 receiving health care.

52 7. A person who violates subsections 1 to 3 of this
53 section is guilty of a class D felony upon his or her first
54 conviction, and shall be guilty of a class B felony upon his
55 or her second and subsequent convictions. Any person who
56 has been convicted of such violations shall be referred to
57 the Office of Inspector General within the United States
58 Department of Health and Human Services. The person so
59 referred shall be subject to the penalties provided for
60 under 42 U.S.C. Chapter 7, Subchapter XI, Section 1320a-7.
61 A prior conviction shall be pleaded and proven as provided
62 by section 558.021. A person who violates subsection 6 of
63 this section shall be guilty of a class D felony, unless the
64 act involves no physical, sexual or emotional harm or injury
65 and the value of the property involved is less than five
66 hundred dollars, in which event a violation of subsection 6
67 of this section is a class A misdemeanor.

68 8. Any natural person who willfully prevents,
69 obstructs, misleads, delays, or attempts to prevent,
70 obstruct, mislead, or delay the communication of information
71 or records relating to a violation of sections 191.900 to
72 191.910 is guilty of a class E felony.

73 9. Each separate false statement or false
74 representation of a material fact proscribed by subsection 1
75 of this section or act proscribed by subsection 2 or 3 of
76 this section shall constitute a separate offense and a
77 separate violation of this section, whether or not made at
78 the same or different times, as part of the same or separate
79 episodes, as part of the same scheme or course of conduct,
80 or as part of the same claim.

81 10. In a prosecution pursuant to subsection 1 of this
82 section, circumstantial evidence may be presented to
83 demonstrate that a false statement or claim was knowingly

84 made. Such evidence of knowledge may include but shall not
85 be limited to the following:

86 (1) A claim for a health care payment submitted with
87 the health care provider's actual, facsimile, stamped,
88 typewritten or similar signature on the claim for health
89 care payment;

90 (2) A claim for a health care payment submitted by
91 means of computer billing tapes or other electronic means;

92 (3) A course of conduct involving other false claims
93 submitted to this or any other health care payer.

94 11. Any person convicted of a violation of this
95 section, in addition to any fines, penalties or sentences
96 imposed by law, shall be required to make restitution to the
97 federal and state governments, in an amount at least equal
98 to that unlawfully paid to or by the person, and shall be
99 required to reimburse the reasonable costs attributable to
100 the investigation and prosecution pursuant to sections
101 191.900 to 191.910. All of such restitution shall be paid
102 and deposited to the credit of the "MO HealthNet Fraud
103 Reimbursement Fund", which is hereby established in the
104 state treasury. Moneys in the MO HealthNet fraud
105 reimbursement fund shall be divided and appropriated to the
106 federal government and affected state agencies in order to
107 refund moneys falsely obtained from the federal and state
108 governments. All of such cost reimbursements attributable
109 to the investigation and prosecution shall be paid and
110 deposited to the credit of the "MO HealthNet Fraud
111 Prosecution Revolving Fund", which is hereby established in
112 the state treasury. Moneys in the MO HealthNet fraud
113 prosecution revolving fund may be appropriated to the
114 attorney general, or to any prosecuting or circuit attorney
115 who has successfully prosecuted an action for a violation of
116 sections 191.900 to 191.910 and been awarded such costs of

117 prosecution, in order to defray the costs of the attorney
118 general and any such prosecuting or circuit attorney in
119 connection with their duties provided by sections 191.900 to
120 191.910. No moneys shall be paid into the MO HealthNet
121 fraud protection revolving fund pursuant to this subsection
122 unless the attorney general or appropriate prosecuting or
123 circuit attorney shall have commenced a prosecution pursuant
124 to this section, and the court finds in its discretion that
125 payment of attorneys' fees and investigative costs is
126 appropriate under all the circumstances, and the attorney
127 general and prosecuting or circuit attorney shall prove to
128 the court those expenses which were reasonable and necessary
129 to the investigation and prosecution of such case, and the
130 court approves such expenses as being reasonable and
131 necessary. Any moneys remaining in the MO HealthNet fraud
132 reimbursement fund after division and appropriation to the
133 federal government and affected state agencies shall be used
134 to increase MO HealthNet provider reimbursement until it is
135 at least one hundred percent of the Medicare provider
136 reimbursement rate for comparable services. The provisions
137 of section 33.080 notwithstanding, moneys in the MO
138 HealthNet fraud prosecution revolving fund shall not lapse
139 at the end of the biennium.

140 12. A person who violates subsections 1 to 3 of this
141 section shall be liable for a civil penalty of not less than
142 five thousand dollars and not more than ten thousand dollars
143 for each separate act in violation of such subsections, plus
144 three times the amount of damages which the state and
145 federal government sustained because of the act of that
146 person, except that the court may assess not more than two
147 times the amount of damages which the state and federal
148 government sustained because of the act of the person, if
149 the court finds:

150 (1) The person committing the violation of this
151 section furnished personnel employed by the attorney general
152 and responsible for investigating violations of sections
153 191.900 to 191.910 with all information known to such person
154 about the violation within thirty days after the date on
155 which the defendant first obtained the information;

156 (2) Such person fully cooperated with any government
157 investigation of such violation; and

158 (3) At the time such person furnished the personnel of
159 the attorney general with the information about the
160 violation, no criminal prosecution, civil action, or
161 administrative action had commenced with respect to such
162 violation, and the person did not have actual knowledge of
163 the existence of an investigation into such violation.

164 13. Upon conviction pursuant to this section, the
165 prosecution authority shall provide written notification of
166 the conviction to all regulatory or disciplinary agencies
167 with authority over the conduct of the defendant health care
168 provider.

169 14. The attorney general may bring a civil action
170 against any person who shall receive a health care payment
171 as a result of a false statement or false representation of
172 a material fact made or caused to be made by that person.
173 The person shall be liable for up to double the amount of
174 all payments received by that person based upon the false
175 statement or false representation of a material fact, and
176 the reasonable costs attributable to the prosecution of the
177 civil action. All such restitution shall be paid and
178 deposited to the credit of the MO HealthNet fraud
179 reimbursement fund, and all such cost reimbursements shall
180 be paid and deposited to the credit of the MO HealthNet
181 fraud prosecution revolving fund. No reimbursement of such
182 costs attributable to the prosecution of the civil action

183 shall be made or allowed except with the approval of the
184 court having jurisdiction of the civil action. No civil
185 action provided by this subsection shall be brought if
186 restitution and civil penalties provided by subsections 11
187 and 12 of this section have been previously ordered against
188 the person for the same cause of action.

189 15. Any person who discovers a violation by himself or
190 herself or such person's organization and who reports such
191 information voluntarily before such information is public or
192 known to the attorney general shall not be prosecuted for a
193 criminal violation.

2 191.1400. 1. This section shall be known and may be
cited as the "Compassionate Care Visitation Act".

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

5 (1) "Compassionate care visitor", a patient's or
6 resident's friend, family member, or other person,
7 including, but not limited to, any of the following:

8 (a) A clergy member;

9 (b) A lay person offering religious or spiritual
10 support;

11 (c) A person providing a service requested by the
12 patient or resident, such as a hairdresser or barber; or

13 (d) Any other person requested by the patient or
14 resident for the purpose of a compassionate care visit;

15 (2) "Compassionate care visit", a visit necessary to
16 meet the physical or mental needs of the patient or
17 resident, including, but not limited to:

18 (a) For end-of-life situations, including making
19 decisions regarding end-of-life care during in-person
20 contact or communication with the compassionate care visitor;

21 (b) For adjustment support or communication support,
22 including, but not limited to, assistance with hearing and
23 speaking;

24 (c) For emotional support;

25 (d) For physical support after eating or drinking
26 issues, including weight loss or dehydration; or

27 (e) For social support;

28 (3) "Health care facility", a hospital, as defined in
29 section 197.020, a long-term care facility licensed under
30 chapter 198, or a hospice facility certified under chapter
31 197.

32 3. A health care facility shall allow a patient or
33 resident, or his or her legal guardian, to permit at least
34 two compassionate care visitors simultaneously to have in-
35 person contact with the patient or resident during visiting
36 hours. Compassionate care visitation hours shall be no less
37 than six hours daily and shall include evenings, weekends,
38 and holidays. Health care facilities shall be permitted to
39 place restrictions on minor children who are compassionate
40 care visitors.

41 4. Health care facilities shall have a visitation
42 policy that allows, at a minimum:

43 (1) Twenty-four hour attendance by a compassionate
44 care visitor when appropriate;

45 (2) A compassionate care visitor to leave and return
46 within the hours of the visitation policy. A patient or
47 resident may receive multiple compassionate care visitors
48 during visitation hours, subject to the provisions of
49 subsection 3 of this section; and

50 (3) Parents with custody or unsupervised visitation
51 rights, legal guardians, and other persons standing in loco
52 parentis to be physically present with a minor child while
53 the child receives care in the facility.

54 5. This section shall not affect any obligation of a
55 health care facility to:

56 (1) Provide patients or residents with effective
57 communication supports or other reasonable accommodations in
58 accordance with federal and state laws to assist in remote
59 personal contact; and

60 (2) Comply with the provisions of the Americans with
61 Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.

62 6. A health care facility may limit:

63 (1) The number of visitors per patient or resident at
64 one time based on the size of the building and physical
65 space;

66 (2) Movement of visitors within the health care
67 facility, including restricting access to operating rooms,
68 isolation rooms or units, behavioral health units, or other
69 commonly restricted areas; and

70 (3) Access of any person to a patient:

71 (a) At the request of the patient or resident, or the
72 legal guardian of such;

73 (b) At the request of a law enforcement agency for a
74 person in custody;

75 (c) Due to a court order;

76 (d) To prevent substantial disruption to the care of a
77 patient or resident or the operation of the facility;

78 (e) During the administration of emergency care in
79 critical situations;

80 (f) If the person has measurable signs and symptoms of
81 a transmissible infection; except that, the health care
82 facility shall allow access through telephone or other means
83 of telecommunication that ensure the protection of the
84 patient or resident;

85 (g) If the health care facility has reasonable cause
86 to suspect the person of being a danger or otherwise

87 contrary to the health or welfare of the patient or
88 resident, other patients or residents, or facility staff; or

89 (h) If, in the clinical judgment of the patient's or
90 resident's attending physician, the presence of visitors
91 would be medically or therapeutically contraindicated to the
92 health or life of the patient or resident, and the physician
93 attests to such in the patient's or resident's chart.

94 7. Nothing in this section shall limit a health care
95 facility from limiting or redirecting visitors of a patient
96 or resident in a shared room to ensure the health and safety
97 of the patients or residents in the shared room. Nothing in
98 this section shall be construed to prohibit health care
99 facilities from adopting reasonable safety or security
100 restrictions or other requirements for visitors.

101 8. Nothing in this section shall be construed to waive
102 or change long-term care facility residents' rights under
103 sections 198.088 and 198.090.

104 9. No later than January 1, 2023, the department of
105 health and senior services shall develop informational
106 materials for patients, residents, and their legal
107 guardians, regarding the provisions of this section. A
108 health care facility shall make these informational
109 materials accessible upon admission or registration and on
110 the primary website of the health care facility.

111 10. No health care facility shall be held liable for
112 damages in an action involving a liability claim against the
113 facility arising from the compliance with the provisions of
114 this section. The immunity described in this subsection
115 shall not apply to any act or omission by a facility, its
116 employees, or its contractors that constitutes recklessness
117 or willful misconduct and shall be provided in addition to,
118 and shall in no way limit, any other immunity protections
119 that may apply in state or federal law.

120 11. The provisions of this section shall not be
121 terminated, suspended, or waived except by a declaration of
122 emergency under chapter 44, during which time the provisions
123 of sections 191.2290 and 630.202 shall apply.

2 191.2290. 1. The provisions of this section and
3 section 630.202 shall be known and may be cited as the
4 "Essential Caregiver Program Act".

5 2. As used in this section, the following terms mean:

6 (1) "Department", the department of health and senior
7 services;

8 (2) "Essential caregiver", a family member, friend,
9 guardian, or other individual selected by a facility
10 resident or patient who has not been adjudged incapacitated
11 under chapter 475, or the guardian or legal representative
12 of the resident or patient;

13 (3) "Facility", a hospital licensed under chapter 197
14 or a facility licensed under chapter 198.

15 3. During a state of emergency declared pursuant to
16 chapter 44 relating to infectious, contagious, communicable,
17 or dangerous diseases, a facility shall allow a resident or
18 patient who has not been adjudged incapacitated under
19 chapter 475, a resident's or patient's guardian, or a
20 resident's or patient's legally authorized representative to
21 designate an essential caregiver for in-person contact with
22 the resident or patient in accordance with the standards and
23 guidelines developed by the department under this section.

24 Essential caregivers shall be considered as part of the
25 resident's or patient's care team, along with the resident's
26 or patient's health care providers and facility staff.

27 4. The facility shall inform, in writing, residents
28 and patients who have not been adjudged incapacitated under
chapter 475, or guardians or legal representatives of

29 residents or patients, of the "Essential Caregiver Program"
30 and the process for designating an essential caregiver.

31 5. The department shall develop standards and
32 guidelines concerning the essential caregiver program,
33 including, but not limited to, the following:

34 (1) The facility shall allow at least two individuals
35 per resident or patient to be designated as essential
36 caregivers, although the facility may limit the in-person
37 contact to one caregiver at a time. The caregiver shall not
38 be required to have previously served in a caregiver
39 capacity prior to the declared state of emergency;

40 (2) The facility shall establish a reasonable in-
41 person contact schedule to allow the essential caregiver to
42 provide care to the resident or patient for at least four
43 hours each day, including evenings, weekends, and holidays,
44 but shall allow for twenty-four-hour in-person care as
45 necessary and appropriate for the well-being of the resident
46 or patient. The essential caregiver shall be permitted to
47 leave and return during the scheduled hours or be replaced
48 by another essential caregiver;

49 (3) The facility shall establish procedures to enable
50 physical contact between the resident or patient and the
51 essential caregiver. The facility may not require the
52 essential caregiver to undergo more stringent screening,
53 testing, hygiene, personal protective equipment, and other
54 infection control and prevention protocols than required of
55 facility employees;

56 (4) The facility shall specify in its protocols the
57 criteria that the facility will use if it determines that in-
58 person contact by a particular essential caregiver is
59 inconsistent with the resident's or patient's therapeutic
60 care and treatment or is a safety risk to other residents,
61 patients, or staff at the facility. Any limitations placed

62 upon a particular essential caregiver shall be reviewed and
63 documented every seven days to determine if the limitations
64 remain appropriate; and

65 (5) The facility may restrict or revoke in-person
66 contact by an essential caregiver who fails to follow
67 required protocols and procedures established under this
68 subsection.

69 6. (1) A facility may request from the department a
70 suspension of in-person contact by essential caregivers for
71 a period not to exceed seven days. The department may deny
72 the facility's request to suspend in-person contact with
73 essential caregivers if the department determines that such
74 in-person contact does not pose a serious community health
75 risk. A facility may request from the department an
76 extension of a suspension for more than seven days;
77 provided, that the department shall not approve an extension
78 period for longer than seven days at a time. A facility
79 shall not suspend in-person caregiver contact for more than
80 fourteen consecutive days in a twelve-month period or for
81 more than forty-five total days in a twelve-month period.

82 (2) The department shall suspend in-person contact by
83 essential caregivers under this section if it determines
84 that doing so is required under federal law, including a
85 determination that federal law requires a suspension of in-
86 person contact by members of the resident's or patient's
87 care team.

88 (3) The attorney general shall institute all suits
89 necessary on behalf of the state to defend the right of the
90 state to implement the provisions of this section to ensure
91 access by residents and patients to essential caregivers as
92 part of their care team.

93 7. The provisions of this section shall not be
94 construed to require an essential caregiver to provide

95 necessary care to a resident or patient and a facility shall
96 not require an essential caregiver to provide necessary care.

97 8. The provisions of this section shall not apply to
98 those residents or patients whose particular plan of
99 therapeutic care and treatment necessitates restricted or
100 otherwise limited visitation for reasons unrelated to the
101 stated reasons for the declared state emergency.

102 9. A facility, its employees, and its contractors
103 shall be immune from civil liability for an injury or harm
104 caused by or resulting from:

105 (1) Exposure to a contagious disease or other harmful
106 agent that is specified during the state of emergency
107 declared pursuant to chapter 44; or

108 (2) Acts or omissions by essential caregivers who are
109 present in the facility;

110 as a result of the implementation of the essential caregiver
111 program under this section. The immunity described in this
112 subsection shall not apply to any act or omission by a
113 facility, its employees, or its contractors that constitutes
114 recklessness or willful misconduct.

208.909. 1. Consumers receiving personal care
2 assistance services shall be responsible for:

3 (1) Supervising their personal care attendant;

4 (2) Verifying wages to be paid to the personal care
5 attendant;

6 (3) Preparing and submitting time sheets, signed by
7 both the consumer and personal care attendant, to the vendor
8 on a biweekly basis;

9 (4) Promptly notifying the department within ten days
10 of any changes in circumstances affecting the personal care
11 assistance services plan or in the consumer's place of
12 residence;

13 (5) Reporting any problems resulting from the quality
14 of services rendered by the personal care attendant to the
15 vendor. If the consumer is unable to resolve any problems
16 resulting from the quality of service rendered by the
17 personal care attendant with the vendor, the consumer shall
18 report the situation to the department;

19 (6) Providing the vendor with all necessary
20 information to complete required paperwork for establishing
21 the employer identification number;

22 (7) Allowing the vendor to comply with its quality
23 assurance and supervision process, which shall include, but
24 not be limited to, annual face-to-face home visits and
25 monthly case management activities; and

26 (8) Reporting to the department significant changes in
27 their health and ability to self-direct care.

28 2. Participating vendors shall be responsible for:

29 (1) Collecting time sheets or reviewing reports of
30 delivered services and certifying the accuracy thereof;

31 (2) The Medicaid reimbursement process, including the
32 filing of claims and reporting data to the department as
33 required by rule;

34 (3) Transmitting the individual payment directly to
35 the personal care attendant on behalf of the consumer;

36 (4) Ensuring all payroll, employment, and other taxes
37 are paid timely;

38 (5) Monitoring the performance of the personal care
39 assistance services plan. Such monitoring shall occur
40 during the annual face-to-face home visit under section
41 208.918. The vendor shall document whether services are
42 being provided to the consumer as set forth in the plan of
43 care. If the attendant was not providing services as set
44 forth in the plan of care, the vendor shall notify the

45 department and the department may suspend services to the
46 consumer; and

47 [(5)] (6) Reporting to the department significant
48 changes in the consumer's health or ability to self-direct
49 care.

50 3. No state or federal financial assistance shall be
51 authorized or expended to pay for services provided to a
52 consumer under sections 208.900 to 208.927, if the primary
53 benefit of the services is to the household unit, or is a
54 household task that the members of the consumer's household
55 may reasonably be expected to share or do for one another
56 when they live in the same household, unless such service is
57 above and beyond typical activities household members may
58 reasonably provide for another household member without a
59 disability.

60 4. No state or federal financial assistance shall be
61 authorized or expended to pay for personal care assistance
62 services provided by a personal care attendant who has not
63 undergone the background screening process under section
64 192.2495. If the personal care attendant has a
65 disqualifying finding under section 192.2495, no state or
66 federal assistance shall be made, unless a good cause waiver
67 is first obtained from the department in accordance with
68 section 192.2495.

69 5. (1) All vendors shall, by July 1, 2015, have,
70 maintain, and use a telephone tracking system for the
71 purpose of reporting and verifying the delivery of consumer-
72 directed services as authorized by the department of health
73 and senior services or its designee. The telephone tracking
74 system shall be used to process payroll for employees and
75 for submitting claims for reimbursement to the MO HealthNet
76 division. At a minimum, the telephone tracking system shall:

77 (a) Record the exact date services are delivered;

78 (b) Record the exact time the services begin and exact
79 time the services end;

80 (c) Verify the telephone number from which the
81 services are registered;

82 (d) Verify that the number from which the call is
83 placed is a telephone number unique to the client;

84 (e) Require a personal identification number unique to
85 each personal care attendant;

86 (f) Be capable of producing reports of services
87 delivered, tasks performed, client identity, beginning and
88 ending times of service and date of service in summary
89 fashion that constitute adequate documentation of service;
90 and

91 (g) Be capable of producing reimbursement requests for
92 consumer approval that assures accuracy and compliance with
93 program expectations for both the consumer and vendor.

94 (2) As new technology becomes available, the
95 department may allow use of a more advanced tracking system,
96 provided that such system is at least as capable of meeting
97 the requirements of this subsection.

98 (3) The department of health and senior services shall
99 promulgate by rule the minimum necessary criteria of the
100 telephone tracking system. Any rule or portion of a rule,
101 as that term is defined in section 536.010, that is created
102 under the authority delegated in this section shall become
103 effective only if it complies with and is subject to all of
104 the provisions of chapter 536 and, if applicable, section
105 536.028. This section and chapter 536 are nonseverable and
106 if any of the powers vested with the general assembly
107 pursuant to chapter 536 to review, to delay the effective
108 date, or to disapprove and annul a rule are subsequently
109 held unconstitutional, then the grant of rulemaking

110 authority and any rule proposed or adopted after August 28,
111 2010, shall be invalid and void.

112 6. (1) The vendor shall be liable to the consumer for
113 any garnishment action occurring or that has occurred as a
114 result of the vendor's failure to timely pay payroll,
115 employment, or other taxes on behalf of the consumer under
116 subsection 2 of this section. The vendor shall notify the
117 consumer of any communication or correspondence from any
118 federal, state, or local tax authority of any overdue or
119 unpaid tax obligation, as well as any notice of an impending
120 garnishment.

121 (2) The vendor shall be subject to a one thousand
122 dollar penalty per occurrence of the vendor's failure to
123 timely pay payroll, employment, or other taxes on behalf of
124 the consumer under subsection 2 of this section.

565.184. 1. A person commits the offense of abuse of
2 an elderly person, a person with a disability, or a
3 vulnerable person if he or she:

4 (1) Purposely engages in conduct involving more than
5 one incident that causes emotional distress to an elderly
6 person, a person with a disability, or a vulnerable person.
7 The course of conduct shall be such as would cause a
8 reasonable elderly person, person with a disability, or
9 vulnerable person to suffer substantial emotional distress;
10 or

11 (2) Intentionally fails to provide care, goods or
12 services to an elderly person, a person with a disability,
13 or a vulnerable person. The result of the conduct shall be
14 such as would cause a reasonable elderly person, person with
15 a disability, or vulnerable person to suffer physical or
16 emotional distress; or

17 (3) Knowingly acts or knowingly fails to act in a
18 manner which results in a substantial risk to the life, body

19 or health of an elderly person, a person with a disability,
20 or a vulnerable person.

21 2. The offense of abuse of an elderly person, a person
22 with a disability, or a vulnerable person is a class [A
23 misdemeanor] D felony. Nothing in this section shall be
24 construed to mean that an elderly person, a person with a
25 disability, or a vulnerable person is abused solely because
26 such person chooses to rely on spiritual means through
27 prayer, in lieu of medical care, for his or her health care,
28 as evidence by such person's explicit consent, advance
29 directive for health care, or practice.

630.155. 1. A person commits the offense of patient,
2 resident or client abuse or neglect against any person
3 admitted on a voluntary or involuntary basis to any mental
4 health facility or mental health program in which people may
5 be civilly detained pursuant to chapter 632, or any patient,
6 resident or client of any residential facility, day program
7 or specialized service operated, funded or licensed by the
8 department if he knowingly does any of the following:

9 (1) Beats, strikes or injures any person, patient,
10 resident or client;

11 (2) Mistreats or maltreats, handles or treats any such
12 person, patient, resident or client in a brutal or inhuman
13 manner;

14 (3) Uses any more force than is reasonably necessary
15 for the proper control, treatment or management of such
16 person, patient, resident or client;

17 (4) Fails to provide services which are reasonable and
18 necessary to maintain the physical and mental health of any
19 person, patient, resident or client when such failure
20 presents either an imminent danger to the health, safety or
21 welfare of the person, patient, resident or client, or a

22 substantial probability that death or serious physical harm
23 will result.

24 2. Patient, resident or client abuse or neglect is a
25 class A misdemeanor unless committed under subdivision (2)
26 or (4) of subsection 1 of this section in which case such
27 abuse or neglect shall be a class ~~E~~ D felony.

630.202. 1. As used in this section, the following
2 terms mean:

3 (1) "Department", the department of mental health;

4 (2) "Essential caregiver", a family member, friend,
5 guardian, or other individual selected by a facility
6 resident or client who has not been adjudged incapacitated
7 under chapter 475, or the guardian or legal representative
8 of the resident or client;

9 (3) "Facility", a facility operated, licensed, or
10 certified by the department.

11 2. During a state of emergency declared pursuant to
12 chapter 44 relating to infectious, contagious, communicable,
13 or dangerous diseases, a facility shall allow a resident or
14 client who has not been adjudged incapacitated under chapter
15 475, a resident's or client's guardian, or a resident's or
16 client's legally authorized representative to designate an
17 essential caregiver for in-person contact with the resident
18 or client in accordance with the standards and guidelines
19 developed by the department under this section. Essential
20 caregivers shall be considered a part of the resident's or
21 client's care team, along with the resident's or client's
22 health care providers and facility staff.

23 3. The facility shall inform, in writing, residents
24 and clients who have not been adjudged incapacitated under
25 chapter 475, or guardians or legal representatives of
26 residents or clients, of the "Essential Caregiver Program"
27 and the process for designating an essential caregiver.

28 4. The department shall develop standards and
29 guidelines concerning the essential caregiver program,
30 including, but not limited to, the following:

31 (1) The facility shall allow at least two individuals
32 per resident or client to be designated as essential
33 caregivers, although the facility may limit the in-person
34 contact to one caregiver at a time. The caregiver shall not
35 be required to have previously served in a caregiver
36 capacity prior to the declared state of emergency;

37 (2) The facility shall establish a reasonable in-
38 person contact schedule to allow the essential caregiver to
39 provide care to the resident or client for at least four
40 hours each day, including evenings, weekends, and holidays,
41 but shall allow for twenty-four-hour in-person care as
42 necessary and appropriate for the well-being of the resident
43 or client. The essential caregiver shall be permitted to
44 leave and return during the scheduled hours or be replaced
45 by another essential caregiver;

46 (3) The facility shall establish procedures to enable
47 physical contact between the resident or client and the
48 essential caregiver. The facility may not require the
49 essential caregiver to undergo more stringent screening,
50 testing, hygiene, personal protective equipment, and other
51 infection control and prevention protocols than required of
52 facility employees;

53 (4) The facility shall specify in its protocols the
54 criteria that the facility will use if it determines that in-
55 person contact by a particular essential caregiver is
56 inconsistent with the resident's or client's therapeutic
57 care and treatment or is a safety risk to other residents,
58 clients, or staff at the facility. Any limitations placed
59 upon a particular essential caregiver shall be reviewed and

60 documented every seven days to determine if the limitations
61 remain appropriate; and

62 (5) The facility may restrict or revoke in-person
63 contact by an essential caregiver who fails to follow
64 required protocols and procedures established under this
65 subsection.

66 5. (1) A facility may request from the department a
67 suspension of in-person contact by essential caregivers for
68 a period not to exceed seven days. The department may deny
69 the facility's request to suspend in-person contact with
70 essential caregivers if the department determines that such
71 in-person contact does not pose a serious community health
72 risk. A facility may request from the department an
73 extension of a suspension for more than seven days;
74 provided, that the department shall not approve an extension
75 period for longer than seven days at a time. A facility
76 shall not suspend in-person caregiver visitation for more
77 than fourteen consecutive days in a twelve-month period or
78 for more than forty-five total days in a twelve-month period.

79 (2) The department shall suspend in-person contact by
80 essential caregivers under this section if it determines
81 that doing so is required under federal law, including a
82 determination that federal law requires a suspension of in-
83 person contact by members of the resident's or client's care
84 team.

85 (3) The attorney general shall institute all suits
86 necessary on behalf of the state to defend the right of the
87 state to implement the provisions of this section to ensure
88 access by residents and clients to essential caregivers as
89 part of their care team.

90 6. The provisions of this section shall not be
91 construed to require an essential caregiver to provide

92 necessary care to a resident or client and a facility shall
93 not require an essential caregiver to provide necessary care.

94 7. The provisions of this section shall not apply to
95 those residents or clients whose particular plan of
96 therapeutic care and treatment necessitates restricted or
97 otherwise limited visitation for reasons unrelated to the
98 stated reason for the declared state of emergency.

99 8. A facility, its employees, and its contractors
100 shall be immune from civil liability for an injury or harm
101 caused by or resulting from:

102 (1) Exposure to a contagious disease or other harmful
103 agent that is specified during the state of emergency
104 declared pursuant to chapter 44; or

105 (2) Acts or omissions by essential caregivers who are
106 present in the facility;

107 as a result of the implementation of the essential caregiver
108 program under this section. The immunity described in this
109 subsection shall not apply to any act or omission by a
110 facility, its employees, or its contractors that constitutes
111 recklessness or willful misconduct.