

# SENATE BILL NO. 671

101ST GENERAL ASSEMBLY

3750S.03C

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, and to enact in lieu thereof seven 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Section A. Sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 191.900, 191.905, 191.2290, 208.909, 565.184, 630.155, and 630.202, to read as follows:

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

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

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

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

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

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

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 **191.2290. 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**  
**or a facility licensed under chapter 198.**

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

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

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

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

39           (2) The facility shall establish a reasonable in-  
40 person contact schedule to allow the essential caregiver to  
41 visit the resident or patient for at least four hours each  
42 day, including evenings, weekends, and holidays; provided,  
43 such schedule shall be consistent with the facility's  
44 visitation policies concerning hours and location of  
45 visitation;

46           (3) The facility shall establish procedures to enable  
47 physical contact between the resident or patient 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 patient's therapeutic  
57 care and treatment or is a safety risk to other residents,  
58 patients, 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           6. (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 contact for more than

77 fourteen consecutive days in a twelve-month period or for  
78 more than forty-five total days in a twelve-month period.

79 (2) The department may 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 patient's  
84 care team.

85 7. The provisions of this section shall not be  
86 construed to require an essential caregiver to provide  
87 necessary care to a resident or patient and a facility shall  
88 not require an essential caregiver to provide necessary care.

89 8. The provisions of this section shall not apply to  
90 those residents or patients whose particular plan of  
91 therapeutic care and treatment necessitates restricted or  
92 otherwise limited visitation for reasons unrelated to the  
93 stated reasons for the declared state emergency.

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

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

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

102 as a result of the implementation of the essential caregiver  
103 program under this section. The immunity described in this  
104 subsection shall not apply to any act or omission by a  
105 facility, its employees, or its contractors that constitutes  
106 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 **time 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, a facility shall allow a resident or client who  
13 has not been adjudged incapacitated under chapter 475, a  
14 resident's or client's guardian, or a resident's or client's  
15 legally authorized representative to designate an essential  
16 caregiver for in-person contact with the resident or client  
17 in accordance with the standards and guidelines developed by  
18 the department under this section. Essential caregivers  
19 shall be considered a part of the resident's or client's  
20 care team, along with the resident's or client's health care  
21 providers and facility staff.

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

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

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

36           (2) The facility shall establish a reasonable in-  
37 person contact schedule to allow the essential caregiver to  
38 visit the resident or client for at least four hours each  
39 day, including evenings, weekends, and holidays; provided,  
40 such schedule shall be consistent with the facility's

41 visitation policies concerning hours and location of  
42 visitation;

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

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

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

63 5. (1) A facility may request from the department a  
64 suspension of in-person contact by essential caregivers for  
65 a period not to exceed seven days. The department may deny  
66 the facility's request to suspend in-person contact with  
67 essential caregivers if the department determines that such  
68 in-person contact does not pose a serious community health  
69 risk. A facility may request from the department an  
70 extension of a suspension for more than seven days;  
71 provided, that the department shall not approve an extension  
72 period for longer than seven days at a time. A facility

73 shall not suspend in-person caregiver visitation for more  
74 than fourteen consecutive days in a twelve-month period or  
75 for more than forty-five total days in a twelve-month period.

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

82 6. The provisions of this section shall not be  
83 construed to require an essential caregiver to provide  
84 necessary care to a resident or client and a facility shall  
85 not require an essential caregiver to provide necessary care.

86 7. The provisions of this section shall not apply to  
87 those residents or clients whose particular plan of  
88 therapeutic care and treatment necessitates restricted or  
89 otherwise limited visitation for reasons unrelated to the  
90 stated reason for the declared state of emergency.

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

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

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

99 as a result of the implementation of the essential caregiver  
100 program under this section. The immunity described in this  
101 subsection shall not apply to any act or omission by a

102 facility, its employees, or its contractors that constitutes  
103 recklessness or willful misconduct.

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