

SECOND REGULAR SESSION

[CORRECTED]

# SENATE BILL NO. 671

## 101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

3750S.02I

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Section A. Sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 191.900, 191.905, 191.2290, 208.909, 565.184, 630.155, and 630.202, to read as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

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

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;

(9) "Medical assistance program", MO HealthNet, or any program to provide or finance health care to participants which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly. The term "medical assistance program" shall include the medical assistance program provided by section 208.151, et seq., and any state agency or agencies administering all or any part of such a program;

(10) **"Neglect", the failure to provide to a person receiving health care the care, goods, or services that 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;**

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

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

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

(2) Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a 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.

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

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

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

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

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

14. The attorney general may bring a civil action against any person who shall receive a health care payment as a result of a false statement or false representation of



a material fact made or caused to be made by that person. The person shall be liable for up to double the amount of all payments received by that person based upon the false statement or false representation of a material fact, and the reasonable costs attributable to the prosecution of the civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to the credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such costs attributable to the prosecution of the civil action shall be made or allowed except with the approval of the court having jurisdiction of the civil action. No civil action provided by this subsection shall be brought if restitution and civil penalties provided by subsections 11 and 12 of this section have been previously ordered against the person for the same cause of action.

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

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

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

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

**(2) "Essential caregiver", a family member, friend, guardian, or other individual selected by a facility resident, or the guardian or legal representative of the resident;**

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

13           3. During a state of emergency declared pursuant to  
14 chapter 44, a facility shall allow a resident, a resident's  
15 guardian, or a resident's legally authorized representative  
16 to designate an essential caregiver for in-person visitation  
17 with the resident in accordance with the standards and  
18 guidelines developed by the department under this section.

19           4. The facility shall inform, in writing, residents,  
20 or guardians or legal representatives of residents, of the  
21 "Essential Caregiver Program" and the process for  
22 designating an essential caregiver.

23           5. The department shall develop standards and  
24 guidelines concerning the essential caregiver program,  
25 including, but not limited to, the following:

26           (1) The facility shall allow at least two individuals  
27 per resident to be designated as essential caregivers,  
28 although the facility may limit the visitation to one  
29 caregiver at a time. The caregiver shall not be required to  
30 have previously served in a caregiver capacity prior to the  
31 declared state of emergency;

32           (2) The facility shall establish a visitation schedule  
33 to allow the essential caregiver to visit the resident for  
34 at least four hours each day; and

35           (3) The facility shall establish procedures to enable  
36 physical contact between the resident and the essential  
37 caregiver. The facility may not require the essential  
38 caregiver to undergo more stringent screening, testing,  
39 hygiene, personal protective equipment, and other infection  
40 control and prevention protocols than required of facility  
41 employees. The facility may restrict or revoke visitation

42 by an essential caregiver who fails to follow required  
43 protocols established under this subdivision.

44 6. A facility may request from the department a  
45 suspension of in-person visitation by essential caregivers  
46 for a period not to exceed seven days. The department may  
47 deny the facility's request to suspend visitation if the  
48 department determines that in-person visitation does not  
49 pose a serious community health risk. A facility may  
50 request from the department an extension of a suspension for  
51 more than seven days; provided, that the department shall  
52 not approve an extension period for longer than seven days  
53 at a time. A facility shall not suspend in-person caregiver  
54 visitation for more than fourteen consecutive days in a  
55 twelve-month period or for more than forty-five total days  
56 in a twelve-month period.

57 7. The provisions of this section shall not be  
58 construed to require an essential caregiver to provide  
59 necessary care to a resident and a facility shall not  
60 require an essential caregiver to provide necessary care.

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

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

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

69 as a result of the implementation of the essential caregiver  
70 program under this section. The immunity described in this  
71 subsection shall not apply to any act or omission that  
72 constitutes recklessness or willful misconduct.

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

- (1) Supervising their personal care attendant;
- (2) Verifying wages to be paid to the personal care attendant;
- (3) Preparing and submitting time sheets, signed by both the consumer and personal care attendant, to the vendor on a biweekly basis;
- (4) Promptly notifying the department within ten days of any changes in circumstances affecting the personal care assistance services plan or in the consumer's place of residence;
- (5) Reporting any problems resulting from the quality of services rendered by the personal care attendant to the vendor. If the consumer is unable to resolve any problems resulting from the quality of service rendered by the personal care attendant with the vendor, the consumer shall report the situation to the department;
- (6) Providing the vendor with all necessary information to complete required paperwork for establishing the employer identification number;
- (7) Allowing the vendor to comply with its quality assurance and supervision process, which shall include, but not be limited to, annual face-to-face home visits and monthly case management activities; and
- (8) Reporting to the department significant changes in their health and ability to self-direct care.

2. Participating vendors shall be responsible for:

- (1) Collecting time sheets or reviewing reports of 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

undergone the background screening process under section 192.2495. If the personal care attendant has a disqualifying finding under section 192.2495, no state or federal assistance shall be made, unless a good cause waiver is first obtained from the department in accordance with section 192.2495.

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

(a) Record the exact date services are delivered;

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

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

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

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

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

(g) Be capable of producing reimbursement requests for consumer approval that assures accuracy and compliance with 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. The vendor shall be liable to the consumer for any**  
113 **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.**

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 the guardian or legal representative of the  
7 resident;

8           (3) "Facility", a residential facility licensed by the  
9 department under this chapter.

10           2. During a state of emergency declared pursuant to  
11 chapter 44, a facility shall allow a resident, a resident's  
12 guardian, or a resident's legally authorized representative  
13 to designate an essential caregiver for in-person visitation

14 with the resident in accordance with the standards and  
15 guidelines developed by the department under this section.

16 3. The facility shall inform, in writing, residents,  
17 or guardians or legal representatives of residents, of the  
18 "Essential Caregiver Program" and the process for  
19 designating an essential caregiver.

20 4. The department shall develop standards and  
21 guidelines concerning the essential caregiver program,  
22 including, but not limited to, the following:

23 (1) The facility shall allow at least two individuals  
24 per resident to be designated as essential caregivers,  
25 although the facility may limit the visitation to one  
26 caregiver at a time. The caregiver shall not be required to  
27 have previously served in a caregiver capacity prior to the  
28 declared state of emergency;

29 (2) The facility shall establish a visitation schedule  
30 to allow the essential caregiver to visit the resident for  
31 at least four hours each day; and

32 (3) The facility shall establish procedures to enable  
33 physical contact between the resident and the essential  
34 caregiver. The facility may not require the essential  
35 caregiver to undergo more stringent screening, testing,  
36 hygiene, personal protective equipment, and other infection  
37 control and prevention protocols than required of facility  
38 employees. The facility may restrict or revoke visitation  
39 by an essential caregiver who fails to follow required  
40 protocols established under this subdivision.

41 5. A facility may request from the department a  
42 suspension of in-person visitation by essential caregivers  
43 for a period not to exceed seven days. The department may  
44 deny the facility's request to suspend visitation if the  
45 department determines that in-person visitation does not

pose a serious community health risk. A facility may request from the department an extension of a suspension for more than seven days; provided, that the department shall not approve an extension period for longer than seven days at a time. A facility shall not suspend in-person caregiver visitation for more than fourteen consecutive days in a twelve-month period or for more than forty-five total days in a twelve-month period.

6. The provisions of this section shall not be construed to require an essential caregiver to provide necessary care to a resident and a facility shall not require an essential caregiver to provide necessary care.

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

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

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

as a result of the implementation of the essential caregiver program under this section. The immunity described in this subsection shall not apply to any act or omission that constitutes recklessness or willful misconduct.

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