

SECOND REGULAR SESSION

SENATE BILL NO. 1482

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HENDERSON.

6137S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 192.2200, 192.2400, 192.2475, 192.2490, 192.2495, 192.2500, 198.006, 198.070, and 208.912, RSMo, and to enact in lieu thereof twelve new sections relating to abuse and neglect of certain persons, with penalty provisions.

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

Section A. Sections 192.2200, 192.2400, 192.2475,
2 192.2490, 192.2495, 192.2500, 198.006, 198.070, and 208.912,
3 RSMo, are repealed and twelve new sections enacted in lieu
4 thereof, to be known as sections 192.2200, 192.2256, 192.2257,
5 192.2400, 192.2475, 192.2490, 192.2495, 192.2500, 197.550,
6 198.006, 198.070, and 208.912, to read as follows:

192.2200. As used in sections 192.2200 to [192.2260]
2 **192.2275**, unless the context clearly indicates otherwise,
3 the following terms mean:
4 (1) "Abuse", the infliction of physical, sexual, or
5 emotional injury or harm, **including financial exploitation**
6 **by any person, firm, or corporation**;
7 (2) "Adult", an individual over the age of eighteen;
8 (3) "Adult day care program", a group program designed
9 to provide care and supervision to meet the needs of
10 functionally impaired adults for periods of less than twenty-
11 four hours but more than two hours per day in a place other
12 than the adult's own home;
13 (4) "Adult day care provider", the person,
14 corporation, partnership, association or organization

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

15 legally responsible for the overall operation of the adult
16 day care program;

17 (5) "Department", the department of health and senior
18 services;

19 (6) "Financial exploitation", when a person knowingly
20 obtains control over the property of a participant with the
21 intent to deprive the participant of the use, benefit, or
22 possession of his or her property, thereby benefitting the
23 offender or detrimentally affecting the participant by means
24 of:

25 (a) Deceit;

26 (b) Coercion;

27 (c) Creating or confirming another person's impression
28 that is false and that the offender does not believe to be
29 true;

30 (d) Failing to correct a false impression that the
31 offender previously has created or confirmed;

32 (e) Preventing another person from acquiring
33 information pertinent to the disposition of the property
34 involved;

35 (f) Selling or otherwise transferring or encumbering
36 property, or failing to disclose a lien, adverse claim, or
37 other legal impediment to the enjoyment of the property,
38 whether such impediment is or is not valid or is or is not a
39 matter of official record;

40 (g) Promising performance that the offender does not
41 intend to perform or knows will not be performed. Failure
42 to perform on its own shall not be sufficient evidence to
43 prove that the offender did not intend to perform; or

44 (h) Undue influence, which means the use of influence
45 by someone who exercises authority over a participant in
46 order to take unfair advantage of that person's vulnerable

47 **state of mind, neediness, pain, or agony. Undue influence**
48 **includes, but is not limited to, the improper or fraudulent**
49 **use of a power of attorney, guardianship, conservatorship,**
50 **or other fiduciary authority;**

51 (7) "Functionally impaired adult", an adult who by
52 reason of age or infirmity requires care and supervision;

53 [(7)] (8) "License", the document issued by the
54 department in accordance with the provisions of sections
55 192.2200 to [192.2260] **192.2275** to an adult day care program
56 which authorizes the adult day care provider to operate the
57 program in accordance with the provisions of sections
58 192.2200 to [192.2260] **192.2275** and the applicable rules
59 promulgated pursuant thereto;

60 (9) "Neglect", the failure to provide, by those
61 responsible for the care, custody, and control of a
62 participant in an adult day care program, the services that
63 are reasonable and necessary to maintain the physical and
64 mental health of the participant, when such failure presents
65 either an imminent danger to the health, safety, or welfare
66 of the participant or a substantial probability that death
67 or serious physical harm would result;

68 [(8)] (10) "Operator", any person licensed or required
69 to be licensed under the provisions of sections 192.2200 to
70 [192.2260] **192.2275** in order to establish, conduct, or
71 maintain an adult day care program;

72 [(9)] (11) "Participant", a functionally impaired
73 adult who is enrolled in an adult day care program;

74 [(10)] (12) "Person", any individual, firm,
75 corporation, partnership, association, agency, or an
76 incorporated or unincorporated organization regardless of
77 the name used;

78 **[(11)] (13)** "Related", any of the following by blood,
79 marriage or adoption: parent, child, grandchild, brother,
80 sister, half-brother, half-sister, stepparent, uncle, aunt,
81 niece, nephew, or first cousin;

82 **[(12)] (14)** "Staff participant ratio", the number of
83 adult care staff required by the department in relation to
84 the number of adults being cared for by such staff;

85 **[(13)] (15)** "Substantial noncompliance", any violation
86 of a class I or class II standard or twenty or more
87 violations of class III standards.

192.2256. 1. **When any advanced emergency medical technician; adult day care worker; bank personnel; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; emergency medical technician; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; firefighter; first responder, as defined in section 192.2405; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; paramedic; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with the care of a person sixty years of age or older or an eligible adult, as defined in section 192.2400, has reasonable cause to believe that a participant of an adult**

23 day care program has been abused or neglected, he or she
24 shall immediately report or cause a report to be made to the
25 department.

26 2. The report shall contain the name and address of
27 the adult day care program, the name of the participant,
28 information regarding the nature of the abuse or neglect,
29 the name of the complainant, and any other information that
30 may be helpful in an investigation.

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

36 4. In addition to the penalties imposed by this
37 section, any adult day care operator who knowingly conceals
38 any act of abuse or neglect resulting in death or serious
39 physical injury, as defined in section 556.061, is guilty of
40 a class E felony.

41 5. In addition to those persons required to report
42 pursuant to subsection 1 of this section, any other person
43 having reasonable cause to believe that a participant has
44 been abused or neglected may report such information to the
45 department.

46 6. Upon receipt of a report, the department shall
47 initiate an investigation within twenty-four hours and, as
48 soon as possible during the course of the investigation,
49 shall notify the participant's next of kin or responsible
50 party of the report and the investigation and further notify
51 them whether the report was substantiated or
52 unsubstantiated, unless such person is the alleged
53 perpetrator of the abuse or neglect. As provided in section
54 192.2425, substantiated reports of elder abuse shall be

55 promptly reported by the department to the appropriate law
56 enforcement agency and prosecutor.

57 7. Reports, including investigation records, shall be
58 confidential, as provided under section 192.2500.

59 8. Anyone, except any person who has abused or
60 neglected a participant in an adult day care program, who
61 makes a report under this section or who testifies in any
62 administrative or judicial proceeding arising from the
63 report shall be immune from any civil or criminal liability
64 for making such a report or for testifying except for
65 liability for perjury, unless such person acted negligently,
66 recklessly, in bad faith, or with malicious purpose. It is
67 an offense under section 565.189 for any person to knowingly
68 file a false report of elder abuse or neglect.

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

73 10. No person who directs or exercises any authority
74 in an adult day care program shall evict, harass, dismiss,
75 or retaliate against a participant or employee because such
76 participant or employee or any member of such participant's
77 or employee's family has made a report of any violation or
78 suspected violation of laws, ordinances, or regulations
79 applying to the adult day care program that the participant,
80 the participant's family, or an employee has reasonable
81 cause to believe has been committed or has occurred.
82 Through the existing department information and referral
83 telephone contact line, participants, their families, and
84 employees of an adult day care program shall be able to
85 obtain information about their rights, protections, and

86 options in cases of harassment, dismissal, or retaliation
87 due to a report being made under this section.

88 11. Any person who abuses or neglects a participant of
89 an adult day care program is subject to criminal prosecution
90 under section 565.184.

91 12. The department shall maintain the employee
92 disqualification list and place on the employee
93 disqualification list the names of any persons who are or
94 have been employed in any adult day care program and who
95 have been finally determined by the department under section
96 192.2490 to have knowingly or recklessly abused or neglected
97 a participant. A person acts "knowingly" with respect to
98 the person's conduct when a reasonable person should be
99 aware of the result caused by his or her conduct. A person
100 acts "recklessly" when the person consciously disregards a
101 substantial and unjustifiable risk that the person's conduct
102 will result in serious physical injury and such disregard
103 constitutes a gross deviation from the standard of care that
104 a reasonable person would exercise in the situation.

105 13. The timely self-reporting of incidents to the
106 central registry by an adult day care program shall continue
107 to be investigated in accordance with department policy, and
108 shall not be counted or reported by the department as a hot-
109 line call but rather a self-reported incident. If the self-
110 reported incident results in a regulatory violation, such
111 incident shall be reported as a substantiated report.

1 192.2257. 1. Any person having reasonable cause to
2 believe that a misappropriation of a participant of an adult
3 day care program's property or funds has occurred shall
4 report such information to the department.

5 2. For each report the department shall attempt to
6 obtain the names and addresses of the adult day care

7 program, the employee of the adult day care program, the
8 participant of the adult day care program, information
9 regarding the nature of the misappropriation, the name of
10 the complainant, and any other information that may be
11 helpful in an investigation.

12 3. Any adult day care program or adult day care
13 program employee who puts to his or her own use or the use
14 of the adult day care program or otherwise diverts from the
15 adult day care program participant's use any personal
16 property or funds of the adult day care program participant
17 is guilty of a class A misdemeanor.

18 4. Upon receipt of a report, the department shall
19 initiate an investigation and report information gained from
20 such investigation to appropriate law enforcement
21 authorities.

22 5. If the investigation indicates probable
23 misappropriation of property or funds of an adult day care
24 program participant, the investigator shall refer the
25 complaint together with the investigator's report to the
26 department director or the director's designee for
27 appropriate action.

28 6. Reports, including investigation records, shall be
29 confidential, as provided under section 192.2500.

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

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

42 9. No person who directs or exercises any authority in
43 an adult day care program shall harass, dismiss, or
44 retaliate against an adult day care program participant or
45 employee because he or she or any member of his or her
46 family has made a report of any violation or suspected
47 violation of laws, ordinances, or regulations applying to
48 the adult day care program or any adult day care program
49 employee that he or she has reasonable cause to believe has
50 been committed or has occurred.

51 10. The department shall maintain the employee
52 disqualification list and place on the employee
53 disqualification list the names of any persons who are or
54 have been employed by an adult day care program and who have
55 been finally determined by the department under section
56 192.2490 to have misappropriated any property or funds of an
57 adult day care program participant and who came to be known
58 to the person, directly or indirectly, while employed by an
59 adult day care program.

192.2400. As used in sections 192.2400 to 192.2505,
2 the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or
4 emotional injury or harm, including financial exploitation
5 by any person, firm, or corporation and bullying;

6 (2) "Bullying", intimidation or harassment that causes
7 a reasonable person to fear for his or her physical safety
8 or property and may consist of physical actions including
9 gestures; cyberbullying; oral, electronic, or written

10 communication; and any threat of retaliation for reporting
11 of such acts;

12 (3) "Court", the circuit court;

13 (4) "Department", the department of health and senior
14 services;

15 (5) "Director", director of the department of health
16 and senior services or his or her designees;

17 (6) **"Financial exploitation"**, when a person knowingly
18 obtains control over the property of an eligible adult with
19 the intent to deprive the eligible adult of the use,
20 benefit, or possession of his or her property, thereby
21 benefitting the offender or detrimentally affecting the
22 eligible adult by:

23 (a) **Deceit**;

24 (b) **Coercion**;

25 (c) **Creating or confirming another person's impression**
26 **that is false and that the offender does not believe to be**
27 **true**;

28 (d) **Failing to correct a false impression that the**
29 **offender previously has created or confirmed**;

30 (e) **Preventing another person from acquiring**
31 **information pertinent to the disposition of the property**
32 **involved**;

33 (f) **Selling or otherwise transferring or encumbering**
34 **property or failing to disclose a lien, adverse claim, or**
35 **other legal impediment to the enjoyment of the property,**
36 **whether such impediment is or is not valid or is or is not a**
37 **matter of official record**;

38 (g) **Promising performance that the offender does not**
39 **intend to perform or knows will not be performed. Failure**
40 **to perform on its own shall not be sufficient evidence to**
41 **prove that the offender did not intend to perform; or**

42 (h) Undue influence, which means the use of influence
43 by someone who exercises authority over an eligible adult in
44 order to take unfair advantage of that person's vulnerable
45 state of mind, neediness, pain, or agony. Undue influence
46 includes, but is not limited to, the improper or fraudulent
47 use of a power of attorney, guardianship, conservatorship,
48 or other fiduciary authority;

49 (7) "Eligible adult", a person sixty years of age or
50 older who is unable to protect his or her own interests or
51 adequately perform or obtain services which are necessary to
52 meet his or her essential human needs or an adult with a
53 disability, as defined in section 192.2005, between the ages
54 of eighteen and fifty-nine who is unable to protect his or
55 her own interests or adequately perform or obtain services
56 which are necessary to meet his or her essential human needs;

57 [(7)] (8) "Home health agency", the same meaning as
58 such term is defined in section 197.400;

59 [(8)] (9) "Home health agency employee", a person
60 employed by a home health agency;

61 [(9)] (10) "Home health patient", an eligible adult
62 who is receiving services through any home health agency;

63 [(10)] (11) "In-home services client", an eligible
64 adult who is receiving services in his or her private
65 residence through any in-home services provider agency;

66 [(11)] (12) "In-home services employee", a person
67 employed by an in-home services provider agency;

68 [(12)] (13) "In-home services provider agency", a
69 business entity under contract with the department or with a
70 Medicaid participation agreement, which employs persons to
71 deliver any kind of services provided for eligible adults in
72 their private homes;

73 **[(13)] (14)** "Least restrictive environment", a
74 physical setting where protective services for the eligible
75 adult and accommodation is provided in a manner no more
76 restrictive of an individual's personal liberty and no more
77 intrusive than necessary to achieve care and treatment
78 objectives;

79 **[(14)] (15)** "Likelihood of serious physical harm", one
80 or more of the following:

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

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

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

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

102 **[(15)] (16)** "Neglect", the failure to provide services
103 to an eligible adult by any person, firm or corporation with
104 a legal or contractual duty to do so, when such failure

105 presents either an imminent danger to the health, safety, or
106 welfare of the client or a substantial probability that
107 death or serious physical harm would result;

108 **[(16)] (17)** "Protective services", services provided
109 by the state or other governmental or private organizations
110 or individuals which are necessary for the eligible adult to
111 meet his or her essential human needs.

192.2475. 1. When any **advanced emergency medical technician**; adult day care worker; **bank personnel**; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; emergency medical technician; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; firefighter; first responder, as defined in section 192.2405; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; **nurse practitioner**; **paramedic**; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the in-home services client, the

25 department shall maintain contact with the physician
26 regarding the progress of the investigation.

27 2. Any person required in subsection 1 of this section
28 to report or cause a report to be made to the department who
29 fails to do so within a reasonable time after the act of
30 abuse or neglect is guilty of a class A misdemeanor.

31 3. The report shall contain the names and addresses of
32 the in-home services provider agency, the in-home services
33 employee, the in-home services client, the home health
34 agency, the home health agency employee, information
35 regarding the nature of the abuse or neglect, the name of
36 the complainant, and any other information which might be
37 helpful in an investigation.

38 4. In addition to those persons required to report
39 under subsection 1 of this section, any other person having
40 reasonable cause to believe that an in-home services client
41 or home health patient has been abused or neglected by an in-
42 home services employee or home health agency employee may
43 report such information to the department.

44 5. If the investigation indicates possible abuse or
45 neglect of an in-home services client or home health
46 patient, the investigator shall refer the complaint together
47 with his or her report to the department director or his or
48 her designee for appropriate action. If, during the
49 investigation or at its completion, the department has
50 reasonable cause to believe that immediate action is
51 necessary to protect the in-home services client or home
52 health patient from abuse or neglect, the department or the
53 local prosecuting attorney may, or the attorney general upon
54 request of the department shall, file a petition for
55 temporary care and protection of the in-home services client
56 or home health patient in a circuit court of competent

57 jurisdiction. The circuit court in which the petition is
58 filed shall have equitable jurisdiction to issue an ex parte
59 order granting the department authority for the temporary
60 care and protection of the in-home services client or home
61 health patient, for a period not to exceed thirty days.

62 6. Reports, **including investigation records**, shall be
63 confidential, as provided under section 192.2500.

64 7. Anyone, except any person who has abused or
65 neglected an in-home services client or home health patient,
66 who makes a report pursuant to this section or who testifies
67 in any administrative or judicial proceeding arising from
68 the report shall be immune from any civil or criminal
69 liability for making such a report or for testifying except
70 for liability for perjury, unless such person acted
71 negligently, recklessly, in bad faith, or with malicious
72 purpose.

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

77 9. No person who directs or exercises any authority in
78 an in-home services provider agency or home health agency
79 shall harass, dismiss or retaliate against an in-home
80 services client or home health patient, or an in-home
81 services employee or a home health agency employee because
82 he or she or any member of his or her family has made a
83 report of any violation or suspected violation of laws,
84 standards or regulations applying to the in-home services
85 provider agency or home health agency or any in-home
86 services employee or home health agency employee which he or
87 she has reasonable cause to believe has been committed or
88 has occurred.

89 10. Any person who abuses or neglects an in-home
90 services client or home health patient is subject to
91 criminal prosecution under section 565.184. If such person
92 is an in-home services employee and has been found guilty by
93 a court, and if the supervising in-home services provider
94 willfully and knowingly failed to report known abuse by such
95 employee to the department, the supervising in-home services
96 provider may be subject to administrative penalties of one
97 thousand dollars per violation to be collected by the
98 department and the money received therefor shall be paid to
99 the director of revenue and deposited in the state treasury
100 to the credit of the general revenue fund. Any in-home
101 services provider which has had administrative penalties
102 imposed by the department or which has had its contract
103 terminated may seek an administrative review of the
104 department's action pursuant to chapter 621. Any decision
105 of the administrative hearing commission may be appealed to
106 the circuit court in the county where the violation occurred
107 for a trial de novo. For purposes of this subsection, the
108 term "violation" means a determination of guilt by a court.

109 11. The department shall establish a quality assurance
110 and supervision process for clients that requires an in-home
111 services provider agency to conduct random visits to verify
112 compliance with program standards and verify the accuracy of
113 records kept by an in-home services employee.

114 12. The department shall maintain the employee
115 disqualification list and place on the employee
116 disqualification list the names of any persons who have been
117 finally determined by the department, pursuant to section
118 192.2490, to have recklessly, knowingly or purposely abused
119 or neglected an in-home services client or home health
120 patient while employed by an in-home services provider

121 agency or home health agency. For purposes of this section
122 only, "knowingly" and "recklessly" shall have the meanings
123 that are ascribed to them in this section. A person acts
124 "knowingly" with respect to the person's conduct when a
125 reasonable person should be aware of the result caused by
126 his or her conduct. A person acts "recklessly" when the
127 person consciously disregards a substantial and
128 unjustifiable risk that the person's conduct will result in
129 serious physical injury and such disregard constitutes a
130 gross deviation from the standard of care that a reasonable
131 person would exercise in the situation.

132 13. At the time a client has been assessed to
133 determine the level of care as required by rule and is
134 eligible for in-home services, the department shall conduct
135 a safe at home evaluation to determine the client's
136 physical, mental, and environmental capacity. The
137 department shall develop the safe at home evaluation tool by
138 rule in accordance with chapter 536. The purpose of the
139 safe at home evaluation is to assure that each client has
140 the appropriate level of services and professionals involved
141 in the client's care. The plan of service or care for each
142 in-home services client shall be authorized by a nurse. The
143 department may authorize the licensed in-home services
144 nurse, in lieu of the department nurse, to conduct the
145 assessment of the client's condition and to establish a plan
146 of services or care. The department may use the expertise,
147 services, or programs of other departments and agencies on a
148 case-by-case basis to establish the plan of service or
149 care. The department may, as indicated by the safe at home
150 evaluation, refer any client to a mental health
151 professional, as defined in 9 CSR 30- 4.030, for evaluation
152 and treatment as necessary.

153 14. Authorized nurse visits shall occur at least twice
154 annually to assess the client and the client's plan of
155 services. The provider nurse shall report the results of
156 his or her visits to the client's case manager. If the
157 provider nurse believes that the plan of service requires
158 alteration, the department shall be notified and the
159 department shall make a client evaluation. All authorized
160 nurse visits shall be reimbursed to the in-home services
161 provider. All authorized nurse visits shall be reimbursed
162 outside of the nursing home cap for in-home services clients
163 whose services have reached one hundred percent of the
164 average statewide charge for care and treatment in an
165 intermediate care facility, provided that the services have
166 been preauthorized by the department.

167 15. All in-home services clients shall be advised of
168 their rights by the department or the department's designee
169 at the initial evaluation. The rights shall include, but
170 not be limited to, the right to call the department for any
171 reason, including dissatisfaction with the provider or
172 services. The department may contract for services relating
173 to receiving such complaints. The department shall
174 establish a process to receive such nonabuse and neglect
175 calls other than the elder abuse and neglect hotline.

176 16. Subject to appropriations, all nurse visits
177 authorized in sections 192.2400 to 192.2475 shall be
178 reimbursed to the in-home services provider agency.

192.2490. 1. After an investigation and a
2 determination has been made to place a person's name on the
3 employee disqualification list, that person shall be
4 notified in writing mailed to his or her last known address
5 that:

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

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

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

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

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

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

31 4. If a person's name is included on the employee
32 disqualification list without the department providing
33 notice as required under subsection 1 of this section, such
34 person may file a request with the department for removal of
35 the name or for a hearing. Within thirty days after receipt
36 of the request, the department shall either remove the name
37 from the list or grant a hearing and set a date therefor.

38 5. [Any hearing shall] **The director of the department**
39 **or the director's designee shall conduct any hearing by**
40 **telephone or electronic means, unless the person submits a**
41 **written request for the hearing to be conducted in the**
42 **county of the person's residence [by the director of the**
43 **department or the director's designee].** The provisions of
44 chapter 536 for a contested case except those provisions or
45 amendments which are in conflict with this section shall
46 apply to and govern the proceedings contained in this
47 section and the rights and duties of the parties involved.
48 The person appealing such an action shall be entitled to
49 present evidence, pursuant to the provisions of chapter 536,
50 relevant to the allegations.

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

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

65 8. A decision by the director shall be inadmissible in
66 any civil action brought against a facility or the in-home
67 services provider agency and arising out of the facts and
68 circumstances which brought about the employment
69 disqualification proceeding, unless the civil action is

70 brought against the facility or the in-home services
71 provider agency by the department of health and senior
72 services or one of its divisions.

73 9. The length of time the person's name shall appear
74 on the employee disqualification list shall be determined by
75 the director of the department of health and senior services
76 or the director's designee, based upon the following:

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

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

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

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

88 (5) Any mitigating circumstances;

89 (6) Any aggravating circumstances; and

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

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

101 keeping records of all acts finally determined to have
102 occurred under this section.

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

107 (1) Is licensed as an operator under chapter 198;

108 (2) Provides in-home services under contract with the
109 department of social services or its divisions;

110 (3) Employs health care providers as defined in
111 section 376.1350 for temporary or intermittent placement in
112 health care facilities;

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

115 (5) Is an entity licensed under chapter 197;

116 (6) Is a recognized school of nursing, medicine, or
117 other health profession for the purpose of determining
118 whether students scheduled to participate in clinical
119 rotations with entities described in subdivision (1), (2),
120 or (5) of this subsection are included in the employee
121 disqualification list; or

122 (7) Is a consumer reporting agency regulated by the
123 federal Fair Credit Reporting Act that conducts employee
124 background checks on behalf of entities listed in this
125 subsection. Such a consumer reporting agency shall conduct
126 the employee disqualification list check only upon the
127 initiative or request of an entity described in this
128 subsection when the entity is fulfilling its duties required
129 under this section.

130 The information shall be disclosed only to the requesting
131 entity. The department shall inform any person listed above

132 who inquires of the department whether or not a particular
133 name is on the list. The department may require that the
134 request be made in writing **or by electronic means**. No
135 person, corporation, organization, or association who is
136 entitled to access the employee disqualification list may
137 disclose the information to any person, corporation,
138 organization, or association who is not entitled to access
139 the list. Any person, corporation, organization, or
140 association who is entitled to access the employee
141 disqualification list who discloses the information to any
142 person, corporation, organization, or association who is not
143 entitled to access the list shall be guilty of an infraction.

144 12. No person, corporation, organization, or
145 association who received the employee disqualification list
146 under subdivisions (1) to (7) of subsection 11 of this
147 section shall knowingly employ any person who is on the
148 employee disqualification list. Any person, corporation,
149 organization, or association who received the employee
150 disqualification list under subdivisions (1) to (7) of
151 subsection 11 of this section, or any person responsible for
152 providing health care service, who declines to employ or
153 terminates a person whose name is listed in this section
154 shall be immune from suit by that person or anyone else
155 acting for or in behalf of that person for the failure to
156 employ or for the termination of the person whose name is
157 listed on the employee disqualification list.

158 13. Any employer or vendor as defined **or described** in
159 sections 197.250, 197.400, 198.006, 208.900, or 192.2400
160 required to deny employment to an applicant or to discharge
161 an employee, provisional or otherwise, as a result of
162 information obtained through any portion of the background
163 screening and employment eligibility determination process

164 under section 210.903, or subsequent, periodic screenings,
165 shall not be liable in any action brought by the applicant
166 or employee relating to discharge where the employer is
167 required by law to terminate the employee, provisional or
168 otherwise, and shall not be charged for unemployment
169 insurance benefits based on wages paid to the employee for
170 work prior to the date of discharge, pursuant to section
171 288.100, if the employer terminated the employee because the
172 employee:

173 (1) Has been found guilty, pled guilty or nolo
174 contendere in this state or any other state of a crime as
175 listed in subsection 6 of section 192.2495;

176 (2) Was placed on the employee disqualification list
177 under this section after the date of hire;

178 (3) Was placed on the employee disqualification
179 registry maintained by the department of mental health after
180 the date of hire;

181 (4) Has a disqualifying finding under this section,
182 section 192.2495, or is on any of the background check lists
183 in the family care safety registry under sections 210.900 to
184 210.936; or

185 (5) Was denied a good cause waiver as provided for in
186 subsection 10 of section 192.2495.

187 14. Any person who has been listed on the employee
188 disqualification list may request that the director **of the**
189 **department or the director's designee** remove his or her name
190 from the employee disqualification list. The request shall
191 be written and may not be made more than once every twelve
192 months. The request will be granted by the director **of the**
193 **department or the director's designee** upon a clear showing,
194 by written submission only, that the person will not commit
195 additional acts of abuse, neglect, misappropriation of the

196 property or funds, or the falsification of any documents of
197 service delivery to an in-home services client. The
198 director **of the department or the director's designee** may
199 make conditional the removal of a person's name from the
200 list on any terms that the director **of the department or the**
201 **director's designee** deems appropriate, and failure to comply
202 with such terms may result in the person's name being
203 relisted. The **[director's]** determination of whether to
204 remove the person's name from the list is not subject to
205 appeal.

192.2495. 1. For the purposes of this section, the
2 term "provider" means any person, corporation or association
3 who:

- 4 (1) Is licensed as an operator pursuant to chapter 198;
- 5 (2) Provides in-home services under contract with the
6 department of social services or its divisions;
- 7 (3) Employs health care providers as defined in
8 section 376.1350 for temporary or intermittent placement in
9 health care facilities;
- 10 (4) Is an entity licensed pursuant to chapter 197;
- 11 (5) Is a public or private facility, day program,
12 residential facility or specialized service operated, funded
13 or licensed by the department of mental health; or
- 14 (6) Is a licensed adult day care provider.

15 2. For the purpose of this section "patient or
16 resident" has the same meaning as such term is defined in
17 section 43.539.

18 3. Prior to allowing any person who has been hired as
19 a full-time, part-time or temporary position to have contact
20 with any patient or resident the provider shall, or in the
21 case of temporary employees hired through or contracted for

22 an employment agency, the employment agency shall prior to
23 sending a temporary employee to a provider:

24 (1) Request a criminal background check as provided in
25 section 43.540. Completion of an inquiry to the highway
26 patrol for criminal records that are available for
27 disclosure to a provider for the purpose of conducting an
28 employee criminal records background check shall be deemed
29 to fulfill the provider's duty to conduct employee criminal
30 background checks pursuant to this section; except that,
31 completing the inquiries pursuant to this subsection shall
32 not be construed to exempt a provider from further inquiry
33 pursuant to common law requirements governing due
34 diligence. If an applicant has not resided in this state
35 for five consecutive years prior to the date of his or her
36 application for employment, the provider shall request a
37 nationwide check for the purpose of determining if the
38 applicant has a prior criminal history in other states. The
39 fingerprint cards and any required fees shall be sent to the
40 highway patrol's central repository. The fingerprints shall
41 be used for searching the state repository of criminal
42 history information. If no identification is made,
43 fingerprints shall be forwarded to the Federal Bureau of
44 Investigation for the searching of the federal criminal
45 history files. The patrol shall notify the submitting state
46 agency of any criminal history information or lack of
47 criminal history information discovered on the individual.
48 The provisions relating to applicants for employment who
49 have not resided in this state for five consecutive years
50 shall apply only to persons who have no employment history
51 with a licensed Missouri facility during that five-year
52 period. Notwithstanding the provisions of section 610.120,
53 all records related to any criminal history information

54 discovered shall be accessible and available to the provider
55 making the record request; and

56 (2) Make an inquiry to the department of health and
57 senior services whether the person is listed on the employee
58 disqualification list as provided in section 192.2490.

59 4. When the provider requests a criminal background
60 check pursuant to section 43.540, the requesting entity may
61 require that the applicant reimburse the provider for the
62 cost of such record check. When a provider requests a
63 nationwide criminal background check pursuant to subdivision
64 (1) of subsection 3 of this section, the total cost to the
65 provider of any background check required pursuant to this
66 section shall not exceed five dollars which shall be paid to
67 the state. State funding and the obligation of a provider
68 to obtain a nationwide criminal background check shall be
69 subject to the availability of appropriations.

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

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

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

80 (3) Disclose if the applicant is listed on the
81 employee disqualification list as provided in section
82 192.2490; and

83 (4) Disclose if the applicant is listed on any of the
84 background checks in the family care safety registry
85 established under section 210.903. A provider not otherwise

86 prohibited from employing an individual listed on such
87 background checks may deny employment to an individual
88 listed on any of the background checks in such registry.

89 6. An applicant who knowingly fails to disclose his or
90 her criminal history as required in subsection 5 of this
91 section is guilty of a class A misdemeanor. A provider is
92 guilty of a class A misdemeanor if the provider knowingly
93 hires or retains a person to have contact with patients or
94 residents and the person has been found guilty in this state
95 or any other state or has been found guilty of a crime,
96 which if committed in Missouri would be a class A or B
97 felony violation of chapter 565, 566 or [569] 579, or any
98 violation of subsection 3 of section 198.070 **or sections**
99 **565.184, 566.115, 566.116, or [section]** 568.020.

100 7. Any in-home services provider agency or home health
101 agency shall be guilty of a class A misdemeanor if such
102 agency knowingly employs a person to provide in-home
103 services or home health services to any in-home services
104 client or home health patient and such person either refuses
105 to register with the family care safety registry or if such
106 person:

107 (1) Has any of the disqualifying factors listed in
108 subsection 6 of this section;

109 (2) Has been found guilty of or pleaded guilty or nolo
110 contendere to any felony offense under chapter 195 or 579;

111 (3) Has been found guilty of or pleaded guilty or nolo
112 contendere to any felony offense under section 568.045,
113 568.050, 568.060, 568.175, 570.023, 570.025, 570.030,
114 570.040 as it existed prior to January 1, 2017, 570.090,
115 570.145, 570.223, 575.230, or 576.080;

116 (4) Has been found guilty of or pleaded guilty or nolo
117 contendere to a violation of section 577.010 or 577.012 and

118 who is alleged and found by the court to be an aggravated or
119 chronic offender under section 577.023;

120 (5) Has been found guilty of or pleaded guilty or nolo
121 contendere to any offense requiring registration under
122 section [589.400] **589.414**;

123 (6) Is listed on the department of health and senior
124 services employee disqualification list under section
125 192.2490;

126 (7) Is listed on the department of mental health
127 employee disqualification registry under section 630.170; or

128 (8) Has a finding on the child abuse and neglect
129 registry under sections 210.109 to 210.183.

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

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

139 10. Except for the hiring restriction based on the
140 department of health and senior services employee
141 disqualification list established pursuant to section
142 192.2490, the department of health and senior services shall
143 promulgate rules and regulations to waive the hiring
144 restrictions pursuant to this section for good cause. For
145 purposes of this section, "good cause" means the department
146 has made a determination by examining the employee's prior
147 work history and other relevant factors that such employee
148 does not present a risk to the health or safety of residents.

192.2500. 1. Reports, **including investigation records**, confidential under [section] **sections 192.2256, 192.2257, 192.2475 to 192.2490, 197.550, 198.070, 198.090, 208.912, 208.915**, and [sections 192.2475 to 192.2490] **any other record or report related to the inclusion of an individual on the employee disqualification list** shall not be deemed a public record and shall not be subject to the provisions of section 109.180 or chapter 610. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

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

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

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

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

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

(6) Release of a name is requested for the purpose of licensure under chapter 210.

2. The department shall, upon request, provide to the division of employment security within the department of labor and industrial relations copies of the investigative

32 reports that led to an employee being placed on the
33 disqualification list.

197.550. 1. Any person having reasonable cause to
2 believe that a misappropriation of a patient's property or
3 funds has occurred shall report such information to the
4 department.

5 2. For each report the department shall attempt to
6 obtain the names and addresses of the facility or provider,
7 the employee of the facility or provider, the patient of the
8 facility or provider, information regarding the nature of
9 the misappropriation, the name of the complainant, and any
10 other information that may be helpful in an investigation.

11 3. Any facility or provider licensed under this
12 chapter or facility employee who puts to his or her own use
13 or the use of the facility or provider or otherwise diverts
14 from the patient's use any personal property or funds of the
15 patient is guilty of a class A misdemeanor.

16 4. Upon receipt of a report, the department shall
17 initiate an investigation and report information gained from
18 such investigation to appropriate law enforcement
19 authorities.

20 5. If the investigation indicates probable
21 misappropriation of property or funds of a patient, the
22 investigator shall refer the complaint together with the
23 investigator's report to the department director or the
24 director's designee for appropriate action.

25 6. Reports, including investigation records, shall be
26 confidential, as provided under section 192.2500.

27 7. Anyone, except any person participating in or
28 benefitting from the misappropriation of funds, who makes a
29 report under this section or who testifies in any
30 administrative or judicial proceeding arising from the

31 report shall be immune from any civil or criminal liability
32 for making such a report or for testifying except for
33 liability for perjury, unless such person acted negligently,
34 recklessly, in bad faith, or with malicious purpose.

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

39 9. No person who directs or exercises any authority in
40 a facility or provider licensed under this chapter shall
41 harass, dismiss, or retaliate against a patient or employee
42 because he or she or any member of his or her family has
43 made a report of any violation or suspected violation of
44 laws, ordinances, or regulations applying to the facility,
45 provider, or any employee which he or she has reasonable
46 cause to believe has been committed or has occurred.

47 10. The department shall maintain the employee
48 disqualification list and place on the employee
49 disqualification list the names of any persons who are or
50 have been employed by a facility or provider licensed under
51 this chapter and who have been finally determined by the
52 department under section 192.2490 to have misappropriated
53 any property or funds of a patient and who came to be known
54 to the person, directly, or indirectly, while employed by
55 the facility or provider.

198.006. As used in sections 198.003 to 198.186,
2 unless the context clearly indicates otherwise, the
3 following terms mean:

4 (1) "Abuse", the infliction of physical, sexual, or
5 emotional injury or harm, **including financial exploitation**
6 **by any person, firm, or corporation;**

(2) "Activities of daily living" or "ADL", one or more of the following activities of daily living:

9 (a) Eating;

10 (b) Dressing;

11 (c) Bathing;

12 (d) Toileting;

13 (e) Transferring; and

14 (f) Walking;

15 (3) "Administrator", the person who is in general

16 administrative charge of a facility;

17 (4) "Affiliate":

27 (d) With respect to a natural person, any parent,
28 child, sibling, or spouse of that person;

39 definition and assessment of activities of daily living,
40 assessment of cognitive ability, service planning, and
41 interview skills;

42 (6) "Assisted living facility", any premises, other
43 than a residential care facility, intermediate care
44 facility, or skilled nursing facility, that is utilized by
45 its owner, operator, or manager to provide twenty-four-hour
46 care and services and protective oversight to three or more
47 residents who are provided with shelter, board, and who may
48 need and are provided with the following:

49 (a) Assistance with any activities of daily living and
50 any instrumental activities of daily living;

51 (b) Storage, distribution, or administration of
52 medications; and

53 (c) Supervision of health care under the direction of
54 a licensed physician, provided that such services are
55 consistent with a social model of care;

56 Such term shall not include a facility where all of the
57 residents are related within the fourth degree of
58 consanguinity or affinity to the owner, operator, or manager
59 of the facility;

60 (7) "Community-based assessment", documented basic
61 information and analysis provided by appropriately trained
62 and qualified individuals describing an individual's
63 abilities and needs in activities of daily living,
64 instrumental activities of daily living, vision/hearing,
65 nutrition, social participation and support, and cognitive
66 functioning using an assessment tool approved by the
67 department of health and senior services that is designed
68 for community-based services and that is not the nursing
69 home minimum data set;

70 (8) "Dementia", a general term for the loss of
71 thinking, remembering, and reasoning so severe that it
72 interferes with an individual's daily functioning, and may
73 cause symptoms that include changes in personality, mood,
74 and behavior;

75 (9) "Department", the Missouri department of health
76 and senior services;

84 (12) "Financial exploitation", when a person knowingly
85 obtains control over the property of a resident with the
86 intent to deprive the resident of the use, benefit, or
87 possession of his or her property, thereby benefitting the
88 offender or detrimentally affecting the resident by:

89 (a) **Deceit;**

90 (b) *Coercion;*

91 (c) Creating or confirming another person's impression
92 that is false and that the offender does not believe to be
93 true;

94 (d) Failing to correct a false impression that the
95 offender previously has created or confirmed;

96 (e) Preventing another person from acquiring
97 information pertinent to the disposition of the property
98 involved;

99 (f) Selling or otherwise transferring or encumbering
100 property, or failing to disclose a lien, adverse claim, or
101 other legal impediment to the enjoyment of the property,

102 whether such impediment is or is not valid or is or is not a
103 matter of official record;

104 (g) Promising performance that the offender does not
105 intend to perform or knows will not be performed. Failure
106 to perform on its own shall not be sufficient evidence to
107 prove that the offender did not intend to perform; or

108 (h) Undue influence, which means the use of influence
109 by someone who exercises authority over a resident in order
110 to take unfair advantage of that person's vulnerable state
111 of mind, neediness, pain, or agony. Undue influence
112 includes, but is not limited to, the improper or fraudulent
113 use of a power of attorney, guardianship, conservatorship,
114 or other fiduciary authority;

115 (13) "Health care provider", any person providing
116 health care services or goods to residents and who receives
117 funds in payment for such goods or services under Medicaid;

118 [(13)] (14) "Instrumental activities of daily living",
119 or "IADL", one or more of the following activities:

120 (a) Preparing meals;
121 (b) Shopping for personal items;
122 (c) Medication management;
123 (d) Managing money;
124 (e) Using the telephone;
125 (f) Housework; and
126 (g) Transportation ability;

127 [(14)] (15) "Intermediate care facility", any
128 premises, other than a residential care facility, assisted
129 living facility, or skilled nursing facility, which is
130 utilized by its owner, operator, or manager to provide
131 twenty-four-hour accommodation, board, personal care, and
132 basic health and nursing care services under the daily
133 supervision of a licensed nurse and under the direction of a

134 licensed physician to three or more residents dependent for
135 care and supervision and who are not related within the
136 fourth degree of consanguinity or affinity to the owner,
137 operator or manager of the facility;

138 **[(15)] (16)** "Manager", any person other than the
139 administrator of a facility who contracts or otherwise
140 agrees with an owner or operator to supervise the general
141 operation of a facility, providing such services as hiring
142 and training personnel, purchasing supplies, keeping
143 financial records, and making reports;

144 **[(16)] (17)** "Medicaid", medical assistance under
145 section 208.151, et seq., in compliance with Title XIX,
146 Public Law 89-97, 1965 amendments to the Social Security Act
147 (42 U.S.C. Section 301, et seq.), as amended;

148 **[(17)] (18)** "Neglect", the failure to provide, by
149 those responsible for the care, custody, and control of a
150 resident in a facility, the services which are reasonable
151 and necessary to maintain the physical and mental health of
152 the resident, when such failure presents either an imminent
153 danger to the health, safety or welfare of the resident or a
154 substantial probability that death or serious physical harm
155 would result;

156 **[(18)] (19)** "Operator", any person licensed or
157 required to be licensed under the provisions of sections
158 198.003 to 198.096 in order to establish, conduct or
159 maintain a facility;

160 **[(19)] (20)** "Owner", any person who owns an interest
161 of five percent or more in:

162 (a) The land on which any facility is located;

163 (b) The structure or structures in which any facility
164 is located;

(c) Any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure in or on which a facility is located; or

(d) Any lease or sublease of the land or structure in or on which a facility is located.

Owner does not include a holder of a debenture or bond purchased at public issue nor does it include any regulated lender unless the entity or person directly or through a subsidiary operates a facility;

[(20)] (21) "Protective oversight", an awareness twenty-four hours a day of the location of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition, medication, or actual provisions of care, and the responsibility for the welfare of the resident, except where the resident is on voluntary leave;

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

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

196 recuperation, except that, for purposes of receiving
197 supplemental welfare assistance payments under section
198 208.030, only any residential care facility licensed as a
199 residential care facility II immediately prior to August 28,
200 2006, and that continues to meet such licensure requirements
201 for a residential care facility II licensed immediately
202 prior to August 28, 2006, shall continue to receive after
203 August 28, 2006, the payment amount allocated immediately
204 prior to August 28, 2006, for a residential care facility II
205 under section 208.030;

206 **[(23)] (24)** "Skilled nursing facility", any premises,
207 other than a residential care facility, an assisted living
208 facility, or an intermediate care facility, which is
209 utilized by its owner, operator or manager to provide for
210 twenty-four-hour accommodation, board and skilled nursing
211 care and treatment services to at least three residents who
212 are not related within the fourth degree of consanguinity or
213 affinity to the owner, operator or manager of the facility.
214 Skilled nursing care and treatment services are those
215 services commonly performed by or under the supervision of a
216 registered professional nurse for individuals requiring
217 twenty-four-hours-a-day care by licensed nursing personnel
218 including acts of observation, care and counsel of the aged,
219 ill, injured or infirm, the administration of medications
220 and treatments as prescribed by a licensed physician or
221 dentist, and other nursing functions requiring substantial
222 specialized judgment and skill;

223 **[(24)] (25)** "Social model of care", long-term care
224 services based on the abilities, desires, and functional
225 needs of the individual delivered in a setting that is more
226 home-like than institutional and promotes the dignity,
227 individuality, privacy, independence, and autonomy of the

228 individual. Any facility licensed as a residential care
229 facility II prior to August 28, 2006, shall qualify as being
230 more home-like than institutional with respect to
231 construction and physical plant standards;

232 **[(25)] (26)** "Vendor", any person selling goods or
233 services to a health care provider;

234 **[(26)] (27)** "Voluntary leave", an off-premise leave
235 initiated by:

236 (a) A resident that has not been declared mentally
237 incompetent or incapacitated by a court; or

238 (b) A legal guardian of a resident that has been
239 declared mentally incompetent or incapacitated by a court.

198.070. 1. When any **advanced emergency medical**

2 **technician**; adult day care worker; **bank personnel**;
3 chiropractor; Christian Science practitioner; coroner;
4 dentist; embalmer; **emergency medical technician**; employee of
5 the departments of social services, mental health, or health
6 and senior services; employee of a local area agency on
7 aging or an organized area agency on aging program;

8 **firefighter**; **first responder**, as defined in section
9 **192.2405**; funeral director; home health agency or home

10 health agency employee; hospital and clinic personnel
11 engaged in examination, care, or treatment of persons; in-

12 home services owner, provider, operator, or employee; law
13 enforcement officer; long-term care facility administrator
14 or employee; medical examiner; medical resident or intern;

15 mental health professional; minister; nurse; nurse
16 practitioner; optometrist; other health practitioner;

17 **paramedic**; peace officer; pharmacist; physical therapist;
18 physician; physician's assistant; podiatrist; probation or
19 parole officer; psychologist; social worker; or other person
20 with the care of a person sixty years of age or older or an

21 eligible adult, as defined in section 192.2400, has
22 reasonable cause to believe that a resident of a facility
23 has been abused or neglected, he or she shall immediately
24 report or cause a report to be made to the department.

25 2. (1) The report shall contain the name and address
26 of the facility, the name of the resident, information
27 regarding the nature of the abuse or neglect, the name of
28 the complainant, and any other information which might be
29 helpful in an investigation.

30 30. (2) In the event of suspected sexual assault of the
31 resident, in addition to the report to be made to the
32 department, a report shall be made to the appropriate local
33 law enforcement agency in accordance with federal law under
34 the provisions of 42 U.S.C. Section 1320b-25.

35 35. 3. Any person required in subsection 1 of this section
36 to report or cause a report to be made to the department who
37 knowingly fails to make a report within a reasonable time
38 after the act of abuse or neglect as required in this
39 subsection is guilty of a class A misdemeanor.

40 40. 4. In addition to the penalties imposed by this
41 section, any administrator who knowingly conceals any act of
42 abuse or neglect resulting in death or serious physical
43 injury, as defined in section 556.061, is guilty of a class
44 E felony.

45 45. 5. In addition to those persons required to report
46 pursuant to subsection 1 of this section, any other person
47 having reasonable cause to believe that a resident has been
48 abused or neglected may report such information to the
49 department.

50 50. 6. Upon receipt of a report, the department shall
51 initiate an investigation within twenty-four hours and, as
52 soon as possible during the course of the investigation,

53 shall notify the resident's next of kin or responsible party
54 of the report and the investigation and further notify them
55 whether the report was substantiated or unsubstantiated
56 unless such person is the alleged perpetrator of the abuse
57 or neglect. As provided in section 192.2425, substantiated
58 reports of elder abuse shall be promptly reported by the
59 department to the appropriate law enforcement agency and
60 prosecutor.

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

77 8. Reports, **including investigation records**, shall be
78 confidential, as provided pursuant to section 192.2500.

79 9. Anyone, except any person who has abused or
80 neglected a resident in a facility, who makes a report
81 pursuant to this section or who testifies in any
82 administrative or judicial proceeding arising from the
83 report shall be immune from any civil or criminal liability
84 for making such a report or for testifying except for

85 liability for perjury, unless such person acted negligently,
86 recklessly, in bad faith or with malicious purpose. It is a
87 crime under section 565.189 for any person to knowingly file
88 a false report of elder abuse or neglect.

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

93 11. No person who directs or exercises any authority
94 in a facility shall evict, harass, dismiss or retaliate
95 against a resident or employee because such resident or
96 employee or any member of such resident's or employee's
97 family has made a report of any violation or suspected
98 violation of laws, ordinances or regulations applying to the
99 facility which the resident, the resident's family or an
100 employee has reasonable cause to believe has been committed
101 or has occurred. Through the existing department
102 information and referral telephone contact line, residents,
103 their families and employees of a facility shall be able to
104 obtain information about their rights, protections and
105 options in cases of eviction, harassment, dismissal or
106 retaliation due to a report being made pursuant to this
107 section.

108 12. Any person who abuses or neglects a resident of a
109 facility is subject to criminal prosecution under section
110 565.184.

111 13. The department shall maintain the employee
112 disqualification list and place on the employee
113 disqualification list the names of any persons who are or
114 have been employed in any facility and who have been finally
115 determined by the department pursuant to section 192.2490 to
116 have knowingly or recklessly abused or neglected a

117 resident. For purposes of this section only, "knowingly"
118 and "recklessly" shall have the meanings that are ascribed
119 to them in this section. A person acts "knowingly" with
120 respect to the person's conduct when a reasonable person
121 should be aware of the result caused by his or her conduct.
122 A person acts "recklessly" when the person consciously
123 disregards a substantial and unjustifiable risk that the
124 person's conduct will result in serious physical injury and
125 such disregard constitutes a gross deviation from the
126 standard of care that a reasonable person would exercise in
127 the situation.

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

208.912. 1. When any **advanced emergency medical**
2 **technician**; adult day care worker; **bank personnel**;
3 **chiropractor**[,]; **Christian Science practitioner**[,];
4 **coroner**[,]; **dentist**[,]; **embalmer**[,]; **emergency medical**
5 **technician**; employee of the departments of social services,
6 mental health, or health and senior services; employee of a
7 local area agency on aging or an organized area agency on
8 aging program; **firefighter**; **first responder**, as defined in
9 **section 192.2405**; funeral director; home health agency or
10 home health agency employee; hospital and clinic personnel
11 engaged in examination, care, or treatment of persons; in-
12 home services owner, provider, operator, or employee; law
13 enforcement officer; long-term care facility administrator
14 or employee; medical examiner; medical resident or intern;

15 mental health professional; minister; nurse; nurse
16 practitioner; optometrist; other health practitioner;
17 **paramedic**; peace officer; pharmacist; physical therapist;
18 physician; physician's assistant; podiatrist; probation or
19 parole officer; psychologist; vendor as defined in section
20 208.900; personal care attendant; or social worker has
21 reasonable cause to believe that a consumer has been abused
22 or neglected as defined in section 192.2400 as a result of
23 the delivery of or failure to deliver personal care
24 assistance services, he or she shall immediately report or
25 cause a report to be made to the department. If the report
26 is made by a physician of the consumer, the department shall
27 maintain contact with the physician regarding the progress
28 of the investigation.

29 2. When a report of deteriorating physical condition
30 resulting in possible abuse or neglect of a consumer is
31 received by the department, the department's case manager
32 and the department nurse shall be notified. The case
33 manager shall investigate and immediately report the results
34 of the investigation to the department nurse.

35 3. If requested, local area agencies on aging shall
36 provide volunteer training to those persons listed in
37 subsection 1 of this section regarding the detection and
38 reporting of abuse and neglect under this section.

39 4. Any person required in subsection 1 of this section
40 to report or cause a report to be made to the department who
41 fails to do so within a reasonable time after the act of
42 abuse or neglect is guilty of a class A misdemeanor.

43 5. The report shall contain the names and addresses of
44 the vendor, the personal care attendant, and the consumer,
45 and information regarding the nature of the abuse or

46 neglect, the name of the complainant, and any other
47 information which might be helpful in an investigation.

48 6. In addition to those persons required to report
49 under subsection 1 of this section, any other person having
50 reasonable cause to believe that a consumer has been abused
51 or neglected by a personal care attendant may report such
52 information to the department.

53 7. If the investigation indicates possible abuse or
54 neglect of a consumer, the investigator shall refer the
55 complaint together with his or her report to the department
56 director or his or her designee for appropriate action. If,
57 during the investigation or at its completion, the
58 department has reasonable cause to believe that immediate
59 action is necessary to protect the consumer from abuse or
60 neglect, the department or the local prosecuting attorney
61 may, or the attorney general upon request of the department
62 shall, file a petition for temporary care and protection of
63 the consumer in a circuit court of competent jurisdiction.
64 The circuit court in which the petition is filed shall have
65 equitable jurisdiction to issue an ex parte order granting
66 the department authority for the temporary care and
67 protection of **the** consumer, for a period not to exceed
68 thirty days.

69 8. Reports, **including investigation reports**, shall be
70 confidential, as provided under section 192.2500.

71 9. Anyone, except any person who has abused or
72 neglected a consumer, who makes a report pursuant to this
73 section or who testifies in any administrative or judicial
74 proceeding arising from the report shall be immune from any
75 civil or criminal liability for making such a report or for
76 testifying, except for liability for perjury, unless such

77 person acted negligently, recklessly, in bad faith, or with
78 malicious purpose.

79 10. Within five working days after a report required
80 to be made under this section is received, the person making
81 the report shall be notified of its receipt and of the
82 initiation of the investigation.

83 11. No person who directs or exercises any authority
84 as a vendor, and no personal care attendant, shall harass,
85 dismiss or retaliate against a consumer because he or she or
86 any member of his or her family has made a report of any
87 violation or suspected violation of laws, standards or
88 regulations applying to the vendor or personal care
89 attendant which he or she has reasonable cause to believe
90 has been committed or has occurred.

91 12. The department shall place on the employee
92 disqualification list established in section 192.2490 the
93 names of any persons who have been finally determined by the
94 department to have recklessly, knowingly or purposely abused
95 or neglected a consumer while employed by a vendor, or
96 employed by a consumer as a personal care attendant.

97 13. The department shall provide the list maintained
98 pursuant to section 192.2490 to vendors as defined in
99 section 208.900.

100 14. Any person, corporation or association who
101 received the employee disqualification list under subsection
102 13 of this section, or any person responsible for providing
103 health care service, who declines to employ or terminates a
104 person whose name is listed in this section shall be immune
105 from suit by that person or anyone else acting for or in
106 behalf of that person for the failure to employ or for the

107 termination of the person whose name is listed on the
108 employee disqualification list.

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