

FIRST REGULAR SESSION

HOUSE BILL NO. 186

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOLLY, WILLOUGHBY, ABEL, JOHNSON (90), SAGER, LeVOTA, CURLS, CARNAHAN, BURNETT, WILSON (42), ZWEIFEL, HARRIS (23), MUCKLER, GREEN, DONNELLY, YAEGER, BISHOP, HAYWOOD, HENKE, WALKER, MEINERS, JONES, HAMPTON, CAMPBELL, SPRENG, FRASER, RANSDALL, SCHOEMEHL, WILDBERGER, DOUGHERTY, BLAND, SELBY, VILLA, LOWE, DAVIS (122) McKENNA, BARNITZ, SEIGFREID, SHOEMYER (9), YOUNG, LIESE, RIBACK WILSON (25) AND WARD (Co-sponsors).

Read 1st time January 14, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0980L.02I

AN ACT

To repeal sections 197.317, 197.318, 198.018, 198.022, 198.032, 198.036, 198.067, 198.070, 198.090, 198.093, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.270, 660.300, 660.305, 660.315, 660.317, and 660.320, RSMo, and to enact in lieu thereof forty-three new sections relating to protection of the elderly, with penalty provisions.

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

Section A. Sections 197.317, 197.318, 198.018, 198.022, 198.032, 198.036, 198.067, 2 198.070, 198.090, 198.093, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 3 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.058, 660.270, 660.300, 660.305, 4 660.315, 660.317, and 660.320, RSMo, are repealed and forty-three new sections enacted in lieu 5 thereof, to be known as sections 187.010, 187.020, 187.024, 187.028, 187.030, 187.032, 6 187.034, 187.050, 187.080, 187.084, 187.087, 187.090, 187.102, 197.317, 197.318, 197.416, 7 198.018, 198.019, 198.022, 198.024, 198.031, 198.032, 198.036, 198.067, 198.071, 198.090, 8 198.093, 198.301, 198.525, 198.526, 198.532, 208.159, 210.903, 210.909, 210.933, 210.936, 9 344.050, 660.050, 660.251, 660.252, 660.270, 660.310, and 660.321, to read as follows:

187.010. As used in this chapter unless the context clearly indicates otherwise, the 2 following terms mean:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

- 3 (1) "Abuse", the infliction of physical, sexual or emotional injury or harm,
4 including the taking, obtaining, using, transferring, concealing, appropriating or taking
5 possession of property of another person without such person's consent;
- 6 (2) "Department", the Missouri department of health and senior services;
- 7 (3) "Director", the director of the department of health and senior services;
- 8 (4) "Eligible adult", a person sixty years of age or older, or an adult with a
9 disability, as defined in section 660.053, RSMo, between the ages of eighteen and fifty-nine
10 who is unable to protect his or her own interests or adequately perform or obtain services
11 which are necessary to meet his or her essential needs;
- 12 (5) "Facility" or "long-term care facility", any residential care facility I, residential
13 care facility II, intermediate care facility or skilled nursing facility;
- 14 (6) "Health care provider", any person who is paid to deliver or purports to deliver
15 any health care, including any employee, agent or other representative of such person;
- 16 (7) "Home health agency", a public agency or private organization, or a
17 subdivision or subunit of an agency or organization, that provides two or more home
18 health services at the residence of a patient according to a physician's written and signed
19 plan of treatment and is licensed under sections 197.400 to 197.475, RSMo;
- 20 (8) "Home health agency client", a person who is receiving services in his or her
21 place of residence from a home health agency licensed under sections 197.400 to 197.475,
22 RSMo;
- 23 (9) "Home health agency employee", a person employed by a home health agency
24 licensed under sections 197.400 to 197.475, RSMo;
- 25 (10) "Hospice", a coordinated program of palliative and supportive services
26 provided in both home and inpatient settings which provides for physical, psychological,
27 social and spiritual care for dying persons and their families where services are provided
28 by a medically directed interdisciplinary team of professionals and volunteers and
29 bereavement care is available to the family following the death of the person and is licensed
30 pursuant to sections 197.250 to 197.280, RSMo;
- 31 (11) "Hospital", a place devoted primarily to the maintenance and operation of
32 facilities for the diagnosis, treatment or care for not less than twenty-four consecutive
33 hours in any week of three or more nonrelated individuals suffering from illness, disease,
34 injury, deformity or other abnormal physical conditions; or a place devoted primarily to
35 provide for not less than twenty-four consecutive hours in any week medical or nursing
36 care for three or more nonrelated individuals and is licensed pursuant to sections 197.020
37 to 197.120, RSMo. The term "hospital" does not include convalescent, nursing, shelter or
38 boarding homes as defined in chapter 198, RSMo;

39 (12) "In-home services client", an eligible adult who is receiving services in his or
40 her private residence through any in-home services provider agency;

41 (13) "In-home services employee", a person employed by an in-home services
42 provider agency;

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

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

53 (16) "Least restrictive environment", a physical setting where protective services
54 for the eligible adult and accommodation is provided in a manner no more restrictive of
55 an individual's personal liberty and no more intrusive than necessary to achieve care and
56 treatment objectives;

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

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

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

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

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

72 (18) "Neglect", the failure to provide, by those individuals responsible for the care,
73 custody, and control of a person, the services which are reasonable and necessary to
74 maintain the physical and mental health of such person, when such failure presents either

75 **an imminent danger to the health, safety, or welfare of the person or a substantial**
76 **probability that death or serious physical harm would result;**

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

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

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

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

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

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

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

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

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

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

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

3 facility, the name of the resident, information regarding the nature of the abuse or neglect,
4 the name of the complainant and any other information which may be helpful in an
5 investigation.

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

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

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

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

39 harassment, dismissal or retaliation due to a report being made pursuant to this section.

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

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

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

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

13 2. Upon receipt of a report pursuant to section 187.020 involving the eligible adult

14 **not residing in a facility, the department shall initiate a prompt and thorough investigation.**

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

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

37 **5. Reports shall be confidential unless determined by a court of competent**
38 **jurisdiction to the contrary at the court's discretion, or upon a request for an expedited**
39 **hearing. Such information in subsections 1 and 3 of this section shall be reported to any**
40 **person authorized pursuant to paragraph (h) of subdivision (6) of subsection 1 of section**
41 **198.088, RSMo, any individual with a durable power of attorney allowing such individual**
42 **the receipt of such information, or any legal guardianship for the eligible adult not residing**
43 **in a facility who is the subject of the abuse or neglect unless such person is the alleged**
44 **perpetrator of the abuse or neglect or if the eligible adult not residing in a facility objects.**

45 **6. No person, including any person who directs or exercises any authority in an in-**
46 **home services provider agency or home health agency, shall harass, dismiss, or retaliate**
47 **against an eligible adult not residing in a facility or an in-home services employee or home**
48 **health agency employee because the eligible adult, employee, or any member of his or her**
49 **family has made a report of any violation or suspected violation of laws, standards, or**

50 regulations applying to the in-home services provider agency or any in-home services
51 employee, or the home health agency or any home health agency employee which the
52 eligible adult, employee, or family member thereof has reasonable cause to believe has been
53 committed or has occurred.

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

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

70 187.030. 1. The department of health and senior services shall investigate incidents
71 and reports of elder abuse and neglect using the procedures established in sections 660.250
72 to 660.295, RSMo, and shall promptly refer all suspected cases of elder abuse to the
73 appropriate law enforcement agency and shall determine whether protective services are
74 required pursuant to sections 660.250 to 660.295, RSMo.

75 2. The department and law enforcement agencies shall require training and cross-
76 training of all investigatory personnel and other persons as deemed necessary regarding
77 the proper handling of cases involving elder abuse. All noninvestigatory personnel and
78 volunteers for local area agencies on aging shall be instructed on identification and
79 reporting procedures for abuse and neglect to ensure that such personnel and volunteers
80 are able to recognize potential cases of abuse or neglect. Nothing in this subsection shall
81 be construed to allow noninvestigatory personnel and volunteers to act in an investigatory
82 capacity in investigations of elder abuse or neglect. The department, in cooperation with
83 law enforcement agencies, shall, by rule, develop a checklist for department and law
84 enforcement personnel to follow when investigating possible elder abuse.

85 3. No rule or portion of a rule promulgated under the authority of this section shall

86 become effective unless it has been promulgated pursuant to chapter 536, RSMo.

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

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

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

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

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

187.034. Any person, official, or institution complying with the provisions of section
2 187.020 in the making of a report or in cooperating with the department in any of its
3 activities pursuant to sections 187.020 to 187.050, except any person, official, or institution
4 violating section 565.180, 565.182 or 565.184, RSMo, shall be immune from any civil or
5 criminal liability for making such a report or in cooperating with the department, unless
6 such person acted negligently, recklessly, in bad faith or with malicious purpose.

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

5 2. For each report the department shall attempt to obtain the names and addresses
6 of the in-home services provider agency, the home health agency, the in-home services or

7 home health agency employee, the in-home services or home health agency client, and the
8 eligible adult not residing in a facility, information regarding the nature of the
9 misappropriation or falsification, the name of the complainant, and any other information
10 which may be helpful in an investigation.

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

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

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

24 6. Reports shall be confidential unless determined by a court of competent
25 jurisdiction to the contrary at the court's discretion, or upon a request for an expedited
26 hearing. Such information in subsections 3 and 6 of this section shall be reported to any
27 person authorized pursuant to paragraph (h) of subdivision (6) of subsection 1 of section
28 198.088, RSMo, any individual with a durable power of attorney allowing such individual
29 the receipt of such information, or any person with legal guardianship for the eligible adult
30 not residing in a facility who is the subject of the misappropriation or falsification unless
31 such person is the alleged perpetrator of the misappropriation or falsification, or if the
32 eligible adult not residing in a facility objects.

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

39 8. No person shall harass, dismiss, or retaliate against an eligible adult not residing
40 in a facility, or an in-home services or home health agency employee because the eligible
41 adult, employee, or any member of his or her family has made a report of any violation or
42 suspected violation of laws, standards, or regulations applying to the in-home services

43 provider agency or any in-home services employee, or the home health agency or home
44 health agency employee which the eligible adult, employee, or family member thereof has
45 reasonable cause to believe has been committed or has occurred.

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

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

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

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

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

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

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

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

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

24 **5. Any hearing shall be conducted in the county of the person's residence by the**
25 **director of the department or the director's designee. For a contested case except those**
26 **provisions or amendments which are in conflict with this section, the provisions of chapter**
27 **536, RSMo, shall apply to and govern the proceedings contained in this section and the**

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

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

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

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

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

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

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

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

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

57 (5) Any mitigating circumstances;

58 (6) Any aggravating circumstances; and

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

64 department's requirements.

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

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

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

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

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

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

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

77

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

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

89 **13. Any employer who is required to discharge an employee because the employee**
90 **was placed on a disqualification list maintained by the department of health and senior**
91 **services after the date of hire shall not be charged for unemployment insurance benefits**
92 **based on wages paid to the employee for work prior to the date of discharge, pursuant to**
93 **section 288.100, RSMo.**

94 **14. Any person who has been listed on the employee disqualification list may**
95 **request that the director remove his or her name from the employee disqualification list.**
96 **The request shall be in writing and shall not be made more than once every twelve months.**
97 **The request shall be granted by the director upon a clear showing, by written submission**
98 **only, that the person will not commit additional acts of abuse, neglect, misappropriation**
99 **of the property or funds, or the falsification of any documents of service delivery to an in-**

100 home services client. The director may make conditional the removal of a person's name
101 from the list on any terms that the director deems appropriate and failure to comply with
102 such terms may result in the person's name being relisted. The director's determination
103 of whether to remove the person's name from the list is not subject to appeal.

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

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

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

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

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

8 (5) Is a public or private facility, day program, residential facility, or specialized
9 service operated, funded, or licensed by the department of mental health;

10 (6) Is a licensed adult day care provider.

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

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

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

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

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

28 4. When the provider requests a criminal background check pursuant to section
29 43.540, RSMo, the requesting entity may require that the applicant reimburse the provider
30 for the cost of such record check.

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

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

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

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

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

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

48 (a) A felony stealing offense;

49 (b) Child abuse or neglect;

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

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

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

53 (f) A violation of section 568.020, RSMo;

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

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

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

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

67 9. Any provider that demonstrates a pattern of violation of this section shall be
68 subject to the civil penalties established in section 198.067, RSMo, regardless of whether

69 such violations have been or are being corrected. For purposes of this section, a "pattern
70 of violation" shall be established if a facility, at any time within a twelve-month period,
71 receives two or more citations of knowing violations of this section by the department. The
72 twelve-month period shall begin on the date of the first citation and shall end twelve
73 months thereafter.

187.087. 1. Reports confidential pursuant to this section, sections 187.020 to
2 187.034 and sections 187.050 and 187.080 shall not be deemed a public record and shall not
3 be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name
4 of the complainant or any person mentioned in the reports shall not be disclosed unless:

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

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

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

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

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

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

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

187.090. The director or any person designated by the director, may require
2 answers to written interrogatories and require production of any books, papers,
3 correspondence, memoranda, agreements, or other documents or records which the
4 director deems relevant and material to any inspection or investigation. Failure to comply
5 with any request of the department in connection with the investigation and inspection is
6 a ground for refusal to issue a license or contract, or for the immediate suspension or
7 revocation of a license or contract.

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

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

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

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

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

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

197.318. 1. The provisions of section 197.317 shall not apply to a residential care
2 facility I, residential care facility II, intermediate care facility or skilled nursing facility only
3 where the department of [social] **health and senior** services has first determined that there
4 presently exists a need for additional beds of that classification because the average occupancy
5 of all licensed and available residential care facility I, residential care facility II, intermediate care
6 facility and skilled nursing facility beds exceeds ninety percent for at least four consecutive
7 calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility,
8 and the facility otherwise appears to qualify for a certificate of need. The department's
9 certification that there is no need for additional beds shall serve as the final determination and
10 decision of the committee. In determining ninety percent occupancy, residential care facility I
11 and II shall be one separate classification and intermediate care and skilled nursing facilities are
12 another separate classification.

13 2. The Missouri health facilities review committee may, for any facility certified to it by

14 the department, consider the predominant ethnic or religious composition of the residents to be
15 served by that facility in considering whether to grant a certificate of need.

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

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

21 5. The provisions of section 197.317 shall not apply to any facility where at least
22 ninety-five percent of the patients require diets meeting the dietary standards defined by section
23 196.165, RSMo.

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

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

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

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

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

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

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

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

40 (c) Has made an effort to purchase beds for eighteen months following the date the letter
41 of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For purposes of
42 this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to
43 purchase beds from another licensed facility in the same licensure category; and

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

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

49 a. A facility with more than forty beds may expand its licensed bed capacity within the

50 same licensure category by twenty-five percent or thirty beds, whichever is greater, if that same
51 licensure category in such facility has experienced an average occupancy of ninety-three percent
52 or greater over the previous six quarters;

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

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

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

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

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

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

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

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

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

85 (3) The existing facility and proposed facility shall have the same owner or owners,

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

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

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

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

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

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

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

20 198.018. 1. Applications for a license shall be made to the department by the operator
21 upon such forms and including such information and documents as the department may
22 reasonably require by rule or regulation for the purposes of administering sections 198.003 to
23 198.186, section 198.200, and sections 208.030 and 208.159, RSMo.

24 2. The applicant shall submit an affidavit under oath that all documents required by the
25 department to be filed pursuant to this section are true and correct to the best of his knowledge
26 and belief, that the statements contained in the application are true and correct to the best of his

27 knowledge and belief, and that all required documents are either included with the application
28 or are currently on file with the department.

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

36 **4.** The application shall be accompanied by a license fee in an amount established by the
37 department. The fee established by the department shall not exceed six hundred dollars, and
38 shall be a graduated fee based on the licensed capacity of the applicant and the duration of the
39 license. A fee of not more than fifty dollars shall be charged for any amendments to a license
40 initiated by an applicant. In addition, facilities certified to participate in the Medicaid or
41 Medicare programs shall pay a certification fee of up to one thousand dollars annually, payable
42 on or before October first of each year. The amount remitted for the license fee, fee for
43 amendments to a license, or certification fee shall be deposited in the state treasury to the credit
44 of the "Nursing Facility Quality of Care Fund", which is hereby created. All investment earnings
45 of the nursing facility quality of care fund shall be credited to such fund. All moneys in the
46 nursing facility quality of care fund shall, upon appropriation, be used by the division of aging
47 for conducting inspections and surveys, and providing training and technical assistance to
48 facilities licensed under the provisions of this chapter. The unexpended balance in the nursing
49 facility quality of care fund at the end of the biennium is exempt from the provisions of sections
50 33.080, RSMo. The unexpended balance in the nursing facility quality of care fund shall not
51 revert to the general revenue fund, but shall accumulate in the nursing facility quality of care
52 fund from year to year.

53 [4.] **5.** Within ten working days of the effective date of any document that replaces,
54 succeeds, or amends any of the documents required by the department to be filed pursuant to this
55 section, an operator shall file with the department a certified copy of such document. If the
56 operator knowingly fails to file a required document or provide any information amending any
57 document within the time provided for in this section, a circuit court may, upon application of
58 the department or the attorney general, assess a penalty of up to fifty dollars per document for
59 each day past the required date of filing.

60 [5.] **6.** If an operator fails to file documents or amendments to documents as required
61 pursuant to this section and such failure is part of a pattern or practice of concealment, such
62 failure shall be sufficient grounds for revocation of a license or disapproval of an application for

63 a license.

64 [6.] 7. Any facility defined in subdivision (8), (15), (16) or (17) of section 198.006 that
65 is licensed by the state of Missouri pursuant to the provisions of section 198.015 may not be
66 licensed, certified or registered by any other political subdivision of the state of Missouri whether
67 or not it has taxing power, provided, however, that nothing in this subsection shall prohibit a
68 county or city, otherwise empowered under law, to inspect such facility for compliance with local
69 ordinances of food service or fire safety.

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

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

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

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

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

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

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

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

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

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

11 (5) Neither the operator nor any principals in the operation of the facility have ever been
12 convicted of a felony offense concerning the operation of a long-term health care facility or other
13 health care facility or ever knowingly acted or knowingly failed to perform any duty which

14 materially and adversely affected the health, safety, welfare or property of a resident, while acting
15 in a management capacity. The operator of the facility or any principal in the operation of the
16 facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX
17 (Medicaid) program of any state or territory;

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

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

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

24 3. The department may inspect any facility and any records and may make copies of
25 records, at the facility, at the department's own expense, required to be maintained by sections
26 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a
27 license has been issued to or an application for a license has been filed by the operator of such
28 facility. **Except as otherwise provided for in section 198.526**, the department shall make at
29 least two inspections per year, at least one of which shall be unannounced to the operator. The
30 department may make such other inspections, announced or unannounced, as it deems necessary
31 to carry out the provisions of sections 198.003 to 198.136.

32 4. Whenever the department has reasonable grounds to believe that a facility required
33 to be licensed under sections 198.003 to 198.096 is operating without a license, and the
34 department is not permitted access to inspect the facility, or when a licensed operator refuses to
35 permit access to the department to inspect the facility, the department shall apply to the circuit
36 court of the county in which the premises is located for an order authorizing entry for such
37 inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if
38 it finds that a licensed operator has refused to permit the department access to inspect the facility.

**198.024. The department shall promulgate rules to require facilities to submit
2 information regarding their actual staffing and retention patterns. On or before July 1,
3 2004, the department shall make such information available to the public on its website.**

**198.031. Every residential care facility I, residential care facility II, intermediate
2 care facility and skilled nursing facility shall post the most recent inspection report in a
3 conspicuous location in a facility.**

198.032. 1. Nothing contained in **sections 187.020 to 187.050, RSMo, and sections
2 198.003 to 198.186** shall permit the public disclosure by the department of confidential medical,
3 social, personal or financial records of any resident in any facility, except when disclosed in a
4 manner which does not identify any resident, or when ordered to do so by a court of competent
5 jurisdiction. Such records shall be accessible without court order for examination and copying

6 only to the following persons or offices, or to their designees:

7 (1) The department or any person or agency designated by the department;

8 (2) The attorney general, **to perform his or her constitutional or statutory duties;**

9 (3) The department of mental health for residents placed through that department, **to**
10 **perform its constitutional or statutory duties;**

11 (4) Any appropriate law enforcement agency, **to perform its constitutional or statutory**
12 **duties;**

13 (5) The resident, [his] **the resident's guardian or conservator**, or any other person
14 designated by the resident; [and]

15 (6) **The department of social services for individuals who receive Medicaid benefits,**
16 **to perform its constitutional or statutory duties; and**

17 (7) Appropriate committees of the general assembly and the state auditor, but only to the
18 extent of financial records which the operator is required to maintain pursuant to sections
19 198.088 and 198.090.

20 2. Inspection reports and written reports of investigations of complaints, of substantiated
21 reports of abuse and neglect received in accordance with [section 198.070] **sections 187.020 to**
22 **187.028, RSMo**, and complaints received by the department relating to the quality of care of
23 facility residents, shall be accessible to the public for examination and copying, provided that
24 such reports are disclosed in a manner which does not identify the complainant or any particular
25 resident. Records and reports shall clearly show what steps the department and the institution
26 are taking to resolve problems indicated in said inspections, reports and complaints.
27 **Unsubstantiated inspection reports, and written reports of investigations of complaints**
28 **shall not be used by insurance carriers for purposes of insurance underwriting.**

29 3. The department shall maintain a central registry capable of receiving and maintaining
30 reports received in a manner that facilitates rapid access and recall of the information reported,
31 and of subsequent investigations and other relevant information. The department shall
32 electronically record any telephone report of suspected abuse and neglect received by the
33 department and such recorded reports shall be retained by the department for a period of one year
34 after recording.

35 4. Although reports to the central registry may be made anonymously, the department
36 shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect,
37 attempt to obtain the name and address of any person making a report.

198.036. 1. The department may revoke a license in any case in which it finds that the
2 operator:

3 (1) Failed or refused to comply with class I or II standards, as established by the
4 department pursuant to section 198.085; or failed or refused to comply with class III standards

5 as established by the department pursuant to section 198.085, where the aggregate effect of such
6 noncompliances presents either an imminent danger to the health, safety or welfare of any
7 resident or a substantial probability that death or serious physical harm would result;

8 (2) Refused to allow representatives of the department to inspect the facility for
9 compliance with standards;

10 (3) Knowingly acted or knowingly omitted any duty in a manner which would materially
11 and adversely affect the health, safety, welfare or property of a resident; or

12 (4) Demonstrated financial incapacity to operate and conduct the facility in accordance
13 with the provisions of sections 198.003 to 198.096.

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

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

198.067. 1. An action may be brought by the department, or by the attorney general on
2 his or her own volition or at the request of the department or any other appropriate state agency,
3 to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096,
4 to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to
5 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action
6 brought pursuant to the provisions of this section shall be placed at the head of the docket by the
7 court, and the court shall hold a hearing on any action brought pursuant to the provisions of this
8 section no [less] **later** than fifteen days after the filing of the action.

9 2. The department may bring an action in circuit court to recover a civil penalty against
10 the licensed operator of the facility as provided by this section. Such action shall be brought in
11 the circuit court for the county in which the facility is located. The circuit court shall determine
12 the amount of penalty to be assessed within the limits set out in this section. Appeals may be
13 taken from the judgment of the circuit court as in other civil cases.

14 3. The operator of any facility which has been cited with a violation of sections 198.003
15 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of
16 Section 1396r of Title 42 of the United States Code or the regulations established pursuant
17 thereto, is liable to the state for civil penalties of up to [ten] **seventy-five** thousand dollars for
18 each day that the violations existed or continue to exist, **regardless of whether they are or were**
19 **later corrected.** Violations shall be presumed to continue to exist from the time they are found

20 until the time the [division of aging] **department** finds them to have been corrected. The
21 amount of the penalty shall be determined as follows:

22 (1) For each violation of a class I standard, not less than [one hundred fifty] **five**
23 **thousand** dollars nor more than [one] **ten** thousand dollars;

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

26 (3) For each violation of a class III standard, not less than [fifteen] **one hundred fifty**
27 dollars nor more than [one hundred fifty] **five hundred** dollars;

28 (4) For each violation of a federal standard which does not also constitute a violation of
29 a state law or regulation, not less than two hundred fifty dollars nor more than five hundred
30 dollars;

31 (5) For each specific class I violation by the same operator which has been cited
32 **previously** within the past twenty-four months and for each specific class II or III violation by
33 the same operator which has been cited **previously** within the past twelve months, double the
34 amount last imposed. As used in this subdivision the term "violation" shall mean a breach of a
35 specific state or federal standard or statute which remains uncorrected and not in accord with the
36 accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3
37 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code.
38 A judgment rendered against the operator of a facility pursuant to this subsection shall bear
39 interest as provided in subsection 1 of section 408.040, RSMo.

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

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

49 6. **Twenty-five percent of the penalties** collected pursuant to this section shall be
50 deposited in the [division of aging] elderly home-delivered meals trust fund as established in
51 section 660.078, RSMo. Such penalties shall not be considered a charitable contribution for tax
52 purposes. **The remaining seventy-five percent of the penalties collected pursuant to this**
53 **section shall be deposited into the nursing facility quality care fund established in section**
54 **198.418, RSMo.**

55 7. To recover any civil penalty, the moving party shall prove by clear and convincing

56 evidence that the violation occurred.

57 8. The licensed operator of a facility against whom an action to recover a civil penalty
58 is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo,
59 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount
60 of the civil penalty recommended by the moving party in its petition shall be reduced by
61 twenty-five percent and the confessed judgment shall be entered by the circuit court at the
62 reduced amount.

63 9. The amount of any civil penalty assessed by the circuit court pursuant to this section
64 shall **not** be reduced by the amount of any civil monetary penalty which the licensed operator of
65 the facility may establish it has paid pursuant to the laws of the United States for the breach of
66 the same federal standards **and arising out of the same conduct** for which the state action is
67 brought.

68 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this
69 section, any facility which is cited with a violation of a class I standard pursuant to subsection
70 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual
71 nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be
72 liable to the state for a civil penalty of one [hundred] **thousand** dollars multiplied by the number
73 of beds licensed to the facility, up to a maximum of [ten] **seventy-five** thousand dollars pursuant
74 to subsections 1 and 2 of this section. The liability of the facility for civil penalties pursuant to
75 this section shall be incurred immediately upon the citation of the violation and shall not be
76 affected by any subsequent correction of the violation. For the purposes of this section, "serious
77 physical injury" means physical injury that creates a substantial risk of death or that causes
78 serious disfigurement or protracted loss or impairment of the function of any part of the body.

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

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

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

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

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

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

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

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

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

14 (4) Keep a written account, available to a resident and [his] **a resident's** designee or
15 guardian, maintained on a current basis for each resident, with written receipts, for all personal
16 possessions and funds received by or deposited with the facility and for all disbursements made
17 to or on behalf of the resident;

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

20 (6) Within five days of the discharge of a resident, provide the resident, or [his] **the**
21 **resident's** designee or guardian, with an up-to-date accounting of the resident's personal funds

22 and return to the resident the balance of [his] **the resident's** funds and all [his] **the resident's**
23 personal possessions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

198.093. 1. Any resident or former resident who is deprived of any right created by
2 sections 198.088 and 198.090, or the estate of a former resident so deprived, may file a written
3 complaint within [one hundred eighty days] **two years** of the alleged deprivation or injury with
4 the office of the attorney general describing the facts surrounding the alleged deprivation. A
5 copy of the complaint shall be sent to the department by the attorney general.

6 2. The attorney general shall review each complaint and may initiate legal action as
7 provided under sections 198.003 to 198.186.

8 3. If the attorney general fails to initiate a legal action within sixty days of receipt of the
9 complaint, the complainant may, within two hundred forty days of filing the complaint with the

10 attorney general, bring a civil action in an appropriate court against any owner, operator or the
11 agent of any owner or operator to recover actual damages. The court may, in its discretion,
12 award punitive damages which shall be limited to the larger of five hundred dollars or five times
13 the amount of special damages, unless the deprivation complained of is the result of an
14 intentional act or omission causing physical or emotional injury to the resident, and may award
15 to the prevailing party attorney's fees based on the amount of time reasonably expended, and may
16 provide such equitable relief as it deems necessary and proper; except that, an attorney who is
17 paid in whole or part from public funds for his **or her** representation in any cause arising under
18 this section shall not be awarded any attorney fees.

19 4. No owner or operator who pleads and proves as an affirmative defense that he **or she**
20 exercised all care reasonably necessary to prevent the deprivation and injury for which liability
21 is asserted shall be liable under this section.

22 5. Persons bringing suit to recover against a bond for personal funds pursuant to section
23 198.096 shall not be required to first file a complaint with the attorney general pursuant to
24 subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to
25 recover on such bond.

26 6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating,
27 abridging or otherwise limiting the right of any person to bring appropriate legal actions in any
28 court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall
29 any provision of the above-named sections be construed as preventing or discouraging any
30 person from filing a complaint with the department or notifying the department of any alleged
31 deficiency or noncompliance on the part of any facility.

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

198.525. Except as otherwise provided for in section 198.526, in order to comply with
2 sections 198.012 and 198.022, the department of health and senior services shall inspect
3 residential care facilities II, intermediate care facilities and skilled nursing facilities attached to
4 acute care hospitals at least twice a year.

198.526. 1. **Except as provided for in subsection 3 of this section**, the [division of aging] **department of health and senior services** shall inspect all facilities licensed [by the division] **under this chapter** at least twice each year. Such inspections shall be conducted:

- 4 (1) Without the prior notification of the facility; and
- 5 (2) At times of the day, on dates and at intervals which do not permit facilities to
6 anticipate such inspections.

7 2. The [division] **department** shall annually reevaluate the inspection process to ensure
8 the requirements [of subsection 1] of this section are met.

9 **3. The department may reduce the frequency of inspections to once a year if:**

10 **(1) The facility has no class I deficiencies or class II violations related to the direct**
11 **care of residents during an original inspection. A finding of substantial compliance after**
12 **one or more revisits to an original inspection does not satisfy the requirements of this**
13 **subdivision;**

14 **(2) In the year subsequent to a finding of no class I deficiencies or class II violations**
15 **related to the direct care of residents pursuant to subdivision (1) of this subsection, the**
16 **facility has no substantiated complaints involving class I deficiencies or class II violations**
17 **related to the direct care of residents; and**

18 **(3) In the year subsequent to a finding of no class I deficiencies or class II violations**
19 **related to the direct care of residents pursuant to subdivision (1) of this subsection, the**
20 **facility does not have a change in ownership, operator, or director of nursing.**

21 **4. Notwithstanding any other provision of law to the contrary, the department may**
22 **inspect any facility at any time. The department may, but is not required, to conduct an**
23 **inspection in connection with the investigation of any complaint filed against any facility.**
24 **Federal laws and rules governing surveys of facilities are not affected by the provisions of**
25 **this or any other provision of state law.**

198.532. Complaints filed with the [division of aging] **department of health and senior**
2 **services** against a long-term care facility which allege that harm has occurred or is likely to occur
3 to a resident or residents of the facility due to actions or the lack of actions taken by the facility
4 shall be investigated within thirty days of receipt of such complaints. The purpose of such
5 investigation shall be to ensure the safety, protection and care of all residents of the facility likely
6 to be affected by the alleged action or inaction. Such investigation shall be in addition to the
7 investigation requirements for abuse and neglect reports pursuant to [section 198.070] **sections**
8 **187.020 to 187.028, RSMo.** The [division] **department** shall provide the results of all
9 investigations in accordance with section [660.320] **187.087, RSMo.** The [division] **department**
10 shall provide the results of such investigation in writing to all parties to the complaint, and if
11 requested, to any of the facility's residents, or their family members or guardians. Complaints and

12 written results will be readily available for public access and review at the [division of aging]
13 **department of health and senior services** and at the long-term care facility. Personal
14 information identifying the resident will be blanked out, except in regard to immediate family,
15 the attorney-in-fact or the legal guardian of the resident in question. This information will
16 remain readily available for a period of time determined by the [division of aging] **department.**

208.159. **1.** Notwithstanding the provisions of sections 207.010, RSMo, 208.152, and
2 208.153, the department of social services shall administer payments for nursing home services
3 authorized in sections 208.151, et seq., which govern medical assistance under Title XIX, Public
4 Law 89-97, 1965 amendments to the Federal Social Security Act (42 U.S.C. 301 et seq.), as
5 amended, and shall administer vendor payments for the aged and direct adult services for the
6 aged under Title XX, Public Law 93-647, 1974 amendments to the Federal Social Security Act
7 (42 U.S.C. 1397 et seq.), as amended. The department shall, pursuant to chapter 536, RSMo,
8 promulgate rules and regulations for the purpose of administering such payments, including rules
9 to define the reasonable costs, manner, extent, quality, charges and fees or payments for nursing
10 home services.

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

20 **3. If information contained in a facility's cost report is found to be fraudulent,**
21 **misrepresented or inaccurate, the facility's prospective rate may be retroactively and**
22 **prospectively reduced if the fraudulent, misrepresented or inaccurate information as**
23 **originally reported resulted in the establishment of a higher prospective rate than the**
24 **facility would have received in the absence of such information. The division of medical**
25 **services may audit nursing facility cost reports and adjust costs accordingly so that they**
26 **are consistent with those costs that reflect a normal recurring level of costs expected to be**
27 **incurred annually by the facility on an on-going basis. The division may normalize costs**
28 **deemed to be excessive in a given year when compared over a greater period of time.**

210.903. **1.** To protect children, the elderly, and disabled individuals in this state, and
2 to promote family and community safety by providing information concerning family caregivers,
3 there is hereby established within the department of health and senior services a "Family Care

4 Safety Registry and Access Line" which shall be available by January 1, 2001.

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

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

10 (2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to 210.183
11 and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section
12 570.145, RSMo;

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

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

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

19 (6) Child-care facility license denials, revocations and suspensions pursuant to sections
20 210.201 to 210.259; and

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

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

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

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

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

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

13 (5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether
14 the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of
15 sentence to a charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573,
16 575 and 578, RSMo; and

17 (6) If the background check involves a provider, determine if a facility has been refused

18 licensure or has experienced licensure suspension, revocation or probationary status pursuant to
19 sections 210.201 to 210.259 or chapter 198, RSMo.

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

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

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

210.936. For purposes of providing background information pursuant to sections
2 210.900 to 210.936, reports and related information pursuant to sections [198.070 and] **187.020**
3 **to 187.028, RSMo, section 198.090**, RSMo, sections 210.109 to 210.183, **and** section 630.170,
4 RSMo, [and sections 660.300 to 660.317, RSMo,] shall be deemed public records.

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

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

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

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, pursuant to criminal prosecution [under] **pursuant to** the laws of any state
16 or of the United States, for any offense reasonably related to the qualifications, functions or
17 duties of any profession licensed or regulated [under] **pursuant to** this chapter, for any offense
18 an essential element of which is fraud, dishonesty or an act of violence, or for any offense
19 involving moral turpitude, whether or not sentence is imposed;

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

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

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

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

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

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

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

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

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

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

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

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

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

54 5. Upon a finding by the administrative hearing commission that the grounds, provided
55 in subsection 2 of this section, for disciplinary action are met, the board may, singly or in

56 combination, place upon probation, suspend or revoke a certificate of registration or authority,
57 permit or license.

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

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

11 (1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service
12 program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73,
13 (42 U.S.C. 3001, et seq.), as amended;

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

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

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

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

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

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

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

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

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

34 (11) Serve as the central state agency with primary responsibility for the planning,

35 coordination, development, and evaluation of policy, programs, and services for elderly persons
36 in Missouri consistent with the provisions of subsection 1 of this section and serve as the
37 designated state unit on aging, as defined in the Older Americans Act of 1965;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 5. Any person hired by the department of health and senior services after August 13,
91 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198,
92 RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection
93 process and applicable rules and statutes during the first six months of employment. Any such
94 person shall annually, on the anniversary date of employment, present to the department evidence
95 of having completed at least twenty hours of continuing education in at least two of the following
96 categories: communication techniques, skills development, resident care, or policy update. The
97 department of health and senior services shall by rule describe the curriculum and structure of
98 such continuing education.

99 6. The division may issue and promulgate rules to enforce, implement and effectuate the
100 powers and duties established in this section and sections [198.070 and] **187.020 to 187.034,**
101 **187.050 and 187.080 to 187.087, RSMo, section 198.090, RSMo, and [sections 660.250 and**
102 **660.300 to 660.320] section 660.250. Any rule or portion of a rule, as that term is defined in**
103 **section 536.010, RSMo, that is created under the authority delegated in this section shall become**
104 **effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,**
105 **and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
106 **nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,**

107 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
108 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
109 after August 28, 2001, shall be invalid and void.

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

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

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

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

135

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

**660.251. 1. No legally recognized privilege, except the privileges provided by
2 subdivisions (3) and (4) of section 491.060, RSMo, and section 660.605, shall exempt a
3 person from the reporting requirements of section 187.020 or 187.050, RSMo, sections
4 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or permit a person to refuse to**

5 cooperate fully with or refuse access to records by the department of health and senior
6 services in any of its investigations or activities initiated pursuant to section 187.020 or
7 187.050, RSMo, sections 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or
8 permit a person to refuse to give or receive evidence in any judicial proceeding relating to
9 the likelihood of harm to an eligible adult as defined in section 187.010, RSMo, or section
10 660.250, or to refuse to give or receive evidence in any judicial proceeding relating to any
11 of the investigations of activities initiated pursuant to section 187.020 or 187.050, RSMo,
12 sections 187.080 to 187.087, RSMo, or sections 660.250 to 660.295.

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

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

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

660.252. All Medicaid participation agreements entered into between the
2 department of health and senior services and in-home service provider agencies shall

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

9 660.270. When the department receives a report that there **has been abuse, neglect or**
10 **financial exploitation, or that there otherwise** is a likelihood of serious physical harm to an
11 eligible adult and that he **or she** is in need of protective services and the department is unable
12 to conduct an investigation because access to the eligible adult is barred by any person **or any**
13 **person from whom information has been requested has refused to supply such information,**
14 the director may petition the appropriate court for a warrant **or other order** to enter upon the
15 described premises and investigate the report **or to produce the information.** The application
16 for the warrant **or order** shall identify the eligible adult and the facts and circumstances which
17 require the issuance of the warrant **or order.** The director may also seek an order to enjoin the
18 person **from** barring access to **an eligible adult or** from interfering with the investigation. If the
19 court finds that, based on the report and relevant circumstances and facts, probable cause exists
20 showing that the eligible adult faces **abuse, neglect or financial exploitation, or otherwise**
21 **faces** a likelihood of serious physical harm and is in need of protective services and the director
22 has been prevented by another person from investigating the report, the court may issue the
23 warrant or enjoin the interference with the investigation or both.

660.310. 1. Notwithstanding any other provision of law, if the department of health
2 **and senior services proposes to deny, suspend, place on probation or terminate an in-home**
3 **services provider agency contract, the department of health and senior services shall serve**
4 **upon the applicant or contractor written notice of the proposed action to be taken. The**
5 **notice shall contain a statement of the type of action proposed, the basis for such action,**
6 **the date the action will become effective, and a statement that the applicant or contractor**
7 **shall have thirty days from the date of mailing or delivery of the notice to file a complaint**
8 **requesting a hearing before the administrative hearing commission. The administrative**
9 **hearing commission may consolidate an applicant's or contractor's complaint with any**
10 **proceeding before the administrative hearing commission filed by such contractor or**
11 **applicant pursuant to subsection 3 of section 208.156, RSMo, involving a common question**
12 **of law or fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.125,**
13 **621.135 and 621.145, RSMo, shall apply. With respect to cases in which the department**
14 **has denied a contract to an in-home services provider agency, the administrative hearing**
15 **commission shall conduct a hearing to determine the underlying basis for such denial.**

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

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

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

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

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

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

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

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

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

7 **(1) The department or any person or agency designated by the department for such**
8 **purposes as the department may determine;**

9 **(2) The attorney general, to perform his or her constitutional or statutory duties;**

10 **(3) The department of mental health for residents placed through that department,**
11 **to perform its constitutional or statutory duties;**

12 **(4) Any appropriate law enforcement agency, to perform its constitutional or**
13 **statutory duties;**

14 **(5) The eligible adult client, or his or her legal guardian; and**

15 **(6) The department of social services for individuals who receive Medicaid benefits,**
16 **to perform its constitutional or statutory duties.**

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

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

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

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

22 5. Upon receipt of a report, the department shall initiate an investigation
23 within twenty-four hours and, as soon as possible during the course of the
24 investigation, shall notify the resident's next of kin or responsible party of the report
25 and the investigation and further notify them whether the report was substantiated or

26 unsubstantiated. As provided in section 565.186, RSMo, substantiated reports of
27 elder abuse shall be promptly reported by the department to the appropriate law
28 enforcement agency and prosecutor.

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

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

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

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

51 10. No person who directs or exercises any authority in a facility shall evict,
52 harass, dismiss or retaliate against a resident or employee because such resident or
53 employee or any member of such resident's or employee's family has made a report
54 of any violation or suspected violation of laws, ordinances or regulations applying
55 to the facility which the resident, the resident's family or an employee has reasonable
56 cause to believe has been committed or has occurred. Through the existing division
57 of aging information and referral telephone contact line, residents, their families and
58 employees of a facility shall be able to obtain information about their rights,
59 protections and options in cases of eviction, harassment, dismissal or retaliation due
60 to a report being made pursuant to this section.

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

63 12. The department shall maintain the employee disqualification list and
64 place on the employee disqualification list the names of any persons who have been
65 finally determined by the department pursuant to section 660.315, RSMo, to have
66 recklessly, knowingly or purposely abused or neglected a resident while employed
67 in any facility.

68 13. The timely self-reporting of incidents to the central registry by a facility

69 shall continue to be investigated in accordance with department policy, and shall not
70 be counted or reported by the department as a hot- line call but rather a self-reported
71 incident. If the self-reported incident results in a regulatory violation, such incident
72 shall be reported as a substantiated report.]

2 [565.186. The department of social services shall investigate incidents and
3 reports of elder abuse using the procedures established in sections 660.250 to
4 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly
5 report the incident to the appropriate law enforcement agency and prosecutor and
6 shall determine whether protective services are required pursuant to sections 660.250
to 660.295, RSMo.]

2 [565.188. 1. When any physician, medical examiner, coroner, dentist,
3 chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic
4 personnel engaged in examination, care or treatment of persons, or other health
5 practitioners, psychologists, mental health professional, social worker, adult day care
6 center worker, nursing home worker, probation or parole officer, Christian Science
7 practitioner, peace officer or law enforcement official, or other person with
8 responsibility for the care of a person sixty years of age or older has reasonable cause
9 to suspect that such a person has been subjected to abuse or neglect or observes such
10 a person being subjected to conditions or circumstances which would reasonably
11 result in abuse or neglect, he shall immediately report or cause a report to be made
12 to the department in accordance with the provisions of sections 660.250 to 660.295,
13 RSMo. Any other person who becomes aware of circumstances which may
14 reasonably be expected to be the result of or result in abuse or neglect may report to
the department.

15 2. Any person who knowingly fails to make a report as required in subsection
16 1 of this section is guilty of a class A misdemeanor.

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

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

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

2 [565.190. Any person, official or institution complying with the provisions
3 of section 565.188 in the making of a report, or in cooperating with the department
4 in any of its activities pursuant to sections 565.186 and 565.188, except any person,
5 official or institution violating section 565.180, 565.182 or 565.184, shall be immune
6 from any civil or criminal liability for making such a report, or in cooperating with
7 the department, unless such person acted negligently, recklessly, in bad faith, or with
malicious purpose.]

2 [660.058. 1. The division of aging shall provide budget allotment tables to
each area agency on aging by January first of each year. Each area agency on aging

3 shall submit its area plan, area budget and service contracts to the division of aging
4 by March first of each year. Each April, the area agencies on aging shall present their
5 plans to the division of aging in a public hearing scheduled by the division and held
6 in the area served by the area agency on aging. Within thirty days of such hearing,
7 the division shall report findings and recommendations to the board of directors for
8 the area agency on aging, the area agency on aging advisory council, the members of
9 the senate budget committee and the members of the house appropriations committee
10 for social services and corrections.

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

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

2 [660.300. 1. Beginning January 1, 1993, when any physician, dentist,
3 chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker,
4 psychologist, minister, Christian Science practitioner, peace officer, pharmacist,
5 physical therapist, in-home services owner, in-home services operator, in-home
6 services employee, or employee of the department of social services or of the
7 department of health or of the department of mental health has reasonable cause to
8 believe that an in-home services client has been abused or neglected, as a result of
9 in-home services, he shall immediately report or cause a report to be made to the
10 department.

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

14 3. The report shall contain the names and addresses of the in-home services
15 provider agency, the in-home services employee, the in-home services client,
16 information regarding the nature of the abuse or neglect, the name of the
17 complainant, and any other information which might be helpful in an investigation.

18 4. In addition to those persons required to report under subsection 1 of this
19 section, any other person having reasonable cause to believe that an in-home services
20 client has been abused or neglected by an in-home services employee may report
21 such information to the department.

22 5. Upon receipt of a report, the department shall initiate a prompt and
23 thorough investigation.

24 6. If the investigation indicates possible abuse or neglect of an in-home
25 services client, the investigator shall refer the complaint together with his report to
26 the department director or his designee for appropriate action. If, during the
27 investigation or at its completion, the department has reasonable cause to believe that
immediate removal is necessary to protect the in-home services client from abuse or

28 neglect, the department or the local prosecuting attorney may, or the attorney general
29 upon request of the department shall, file a petition for temporary care and protection
30 of the in-home services client in a circuit court of competent jurisdiction. The circuit
31 court in which the petition is filed shall have equitable jurisdiction to issue an ex
32 parte order granting the department authority for the temporary care and protection
33 of the in-home services client, for a period not to exceed thirty days.

34 7. Reports shall be confidential, as provided under section 660.320.

35 8. Anyone, except any person who has abused or neglected an in-home
36 services client, who makes a report pursuant to this section or who testifies in any
37 administrative or judicial proceeding arising from the report shall be immune from
38 any civil or criminal liability for making such a report or for testifying except for
39 liability for perjury, unless such person acted negligently, recklessly, in bad faith, or
40 with malicious purpose.

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

44 10. No person who directs or exercises any authority in an in-home services
45 provider agency shall harass, dismiss or retaliate against an in-home services client
46 or an in-home services employee because he or any member of his family has made
47 a report of any violation or suspected violation of laws, standards or regulations
48 applying to the in-home services provider agency or any in-home services employee
49 which he has reasonable cause to believe has been committed or has occurred.

50 11. Any person who knowingly abuses or neglects an in-home services client
51 shall be guilty of a class D felony.

52 12. The department shall maintain the employee disqualification list and
53 place on the employee disqualification list the names of any persons who have been
54 finally determined by the department, pursuant to section 660.315, to have recklessly,
55 knowingly or purposely abused or neglected an in-home services client while
56 employed by an in-home services provider agency.]

2 [660.305. 1. Any person having reasonable cause to believe that a
3 misappropriation of an in-home services client's property or funds, or the falsification
4 of any documents verifying service delivery to the in-home services client has
5 occurred, may report such information to the department.

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

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

- 15 4. Upon receipt of a report, the department shall initiate an investigation.
 - 16 5. If the investigation indicates probable misappropriation of property or
 - 17 funds, or falsification of any documents for service delivery of an in-home services
 - 18 client, the investigator shall refer the complaint together with his report to the
 - 19 department director or his designee for appropriate action.
 - 20 6. Reports shall be confidential, as provided under section 660.320.
 - 21 7. Anyone, except any person participating in or benefitting from the
 - 22 misappropriation of funds, who makes a report pursuant to this section or who
 - 23 testifies in any administrative or judicial proceeding arising from the report shall be
 - 24 immune from any civil or criminal liability for making such a report or for testifying
 - 25 except for liability for perjury, unless such person acted negligently, recklessly, in
 - 26 bad faith, or with malicious purpose.
 - 27 8. Within five working days after a report required to be made under this
 - 28 section is received, the person making the report shall be notified in writing of its
 - 29 receipt and of the initiation of the investigation.
 - 30 9. No person who directs or exercises any authority in an in-home services
 - 31 provider agency shall harass, dismiss or retaliate against an in-home services client
 - 32 or employee because he or any member of his family has made a report of any
 - 33 violation or suspected violation of laws, ordinances or regulations applying to the
 - 34 in-home services provider agency or any in-home services employee which he has
 - 35 reasonable cause to believe has been committed or has occurred.
 - 36 10. The department shall maintain the employee disqualification list and
 - 37 place on the employee disqualification list the names of any persons who have been
 - 38 finally determined by the department to, pursuant to section 660.315, have
 - 39 misappropriated any property or funds, or falsified any documents for service
 - 40 delivery of an in-home services client while employed by an in-home services
 - 41 provider agency.]
- [660.315. 1. After an investigation and a determination has been made to
2 place a person's name on the employee disqualification list, that person shall be
3 notified in writing mailed to his last known address that:
- 4 (1) An allegation has been made against him, the substance of the allegation
 - 5 and that an investigation has been conducted which tends to substantiate the
 - 6 allegation;
 - 7 (2) His name will be included in the employee disqualification list of the
 - 8 department;
 - 9 (3) The consequences of being so listed including the length of time to be
 - 10 listed; and
 - 11 (4) His rights and the procedure to challenge the allegation.
- 12 2. If no reply has been received within thirty days of mailing the notice, the
- 13 department may include the name of such person on its list. The length of time the
- 14 person's name shall appear on the employee disqualification list shall be determined
- 15 by the director or his designee, based upon the criteria contained in subsection 9 of
- 16 this section.

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

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

27 5. Any hearing shall be conducted in the county of the person's residence by
28 the director of the division of aging or his designee. The provisions of chapter 536,
29 RSMo, for a contested case except those provisions or amendments which are in
30 conflict with this section, shall apply to and govern the proceedings contained in this
31 section and the rights and duties of the parties involved. The person appealing such
32 an action shall be entitled to present evidence, pursuant to the provisions of chapter
33 536, RSMo, relevant to the allegations.

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

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

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

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

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

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

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

59 (4) Whether the person has previously been listed on the employee

60 disqualification list;

61 (5) Any mitigating circumstances; and

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

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

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

74 (1) Is licensed as an operator under chapter 198, RSMo;

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

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

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

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

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

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

103 from the list is not subject to appeal.]

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

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

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

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

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

7 (5) Is a public or private facility, day program, residential facility or
8 specialized service operated, funded or licensed by the department of mental health.

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

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

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

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

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

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

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

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

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

40 6. An applicant who knowingly fails to disclose his criminal history as
41 required in subsection 5 of this section is guilty of a class A misdemeanor. A
42

43 provider is guilty of a class A misdemeanor if the provider knowingly hires a person
44 to have contact with patients or residents and the person has been convicted of, pled
45 guilty to or nolo contendere in this state or any other state or has been found guilty
46 of a crime, which if committed in Missouri would be a class A or B felony violation
47 of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section
48 198.070, RSMo, or section 568.020, RSMo.

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

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

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

2 [660.320. Reports confidential under section 198.070, RSMo, and sections
3 660.300 to 660.315 shall not be deemed a public record and shall not be subject to
4 the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the
5 complainant or any person mentioned in the reports shall not be disclosed unless:

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

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

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

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

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

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