

SECOND REGULAR SESSION

HOUSE BILL NO. 3379

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLAN.

6155H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 192.2200, 192.2400, 192.2475, 192.2490, 192.2495, 192.2500, 197.312, 198.006, 198.018, 198.070, 198.073, 198.640, and 208.912, RSMo, and to enact in lieu thereof sixteen new sections relating to abuse or neglect of vulnerable persons, with penalty provisions.

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

Section A. Sections 192.2200, 192.2400, 192.2475, 192.2490, 192.2495, 192.2500, 197.312, 198.006, 198.018, 198.070, 198.073, 198.640, and 208.912, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 192.2200, 192.2256, 192.2257, 192.2400, 192.2475, 192.2490, 192.2495, 192.2500, 197.312, 197.550, 198.006, 198.018, 198.070, 198.073, 198.640, and 208.912, to read as follows:

192.2200. As used in sections 192.2200 to ~~[192.2260]~~ **192.2275**, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm **including, but not limited to, financial exploitation by any person, firm, or corporation;**
- (2) "Adult", an individual over the age of eighteen;
- (3) "Adult day care program", a group program designed to provide care and supervision to meet the needs of functionally impaired adults for periods of less than twenty-four hours but more than two hours per day in a place other than the adult's own home;
- (4) "Adult day care provider", the person, corporation, partnership, association or organization legally responsible for the overall operation of the adult day care program;
- (5) "Department", the department of health and senior services;

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (6) **"Financial exploitation"**, when a person knowingly obtains control over the
13 **property of a participant with the intent to deprive the participant of the use, benefit, or**
14 **possession of his or her property, thereby benefiting the offender or detrimentally**
15 **affecting the participant by means of:**

16 (a) **Deceit;**

17 (b) **Coercion;**

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

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

22 (e) **Preventing another person from acquiring information pertinent to the**
23 **disposition of the property involved;**

24 (f) **Selling or otherwise transferring or encumbering property or failing to**
25 **disclose a lien, adverse claim, or other legal impediment to the enjoyment of the**
26 **property regardless of whether such impediment is valid or is a matter of official record;**

27 (g) **Promising performance that the offender does not intend to perform or**
28 **knows will not be performed. Failure to perform by itself is not sufficient evidence to**
29 **prove that the offender did not intend to perform; or**

30 (h) **Undue influence;**

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

33 ~~[(7)]~~ (8) **"License"**, the document issued by the department in accordance with the
34 provisions of sections 192.2200 to ~~[192.2260]~~ **192.2275** to an adult day care program which
35 authorizes the adult day care provider to operate the program in accordance with the
36 provisions of sections 192.2200 to ~~[192.2260]~~ **192.2275** and the applicable rules promulgated
37 pursuant thereto;

38 ~~[(8)]~~ (9) **"Neglect"**, the failure to provide, by those responsible for the care,
39 **custody, and control of a participant in an adult day care program, the services that are**
40 **reasonable and necessary to maintain the physical and mental health of the participant,**
41 **when such failure presents either an imminent danger to the health, safety, or welfare of**
42 **the participant or a substantial probability that death or serious physical harm would**
43 **result;**

44 (10) **"Operator"**, any person licensed or required to be licensed under the provisions
45 of sections 192.2200 to ~~[192.2260]~~ **192.2275** in order to establish, conduct, or maintain an
46 adult day care program;

47 ~~[(9)]~~ (11) **"Participant"**, a functionally impaired adult who is enrolled in an adult day
48 care program;

49 ~~[(10)]~~ **(12)** "Person", any individual, firm, corporation, partnership, association,
50 agency, or an incorporated or unincorporated organization regardless of the name used;

51 ~~[(11)]~~ **(13)** "Related", any of the following by blood, marriage or adoption: parent,
52 child, grandchild, brother, sister, half-brother, half-sister, stepparent, uncle, aunt, niece,
53 nephew, or first cousin;

54 ~~[(12)]~~ **(14)** "Staff participant ratio", the number of adult care staff required by the
55 department in relation to the number of adults being cared for by such staff;

56 ~~[(13)]~~ **(15)** "Substantial noncompliance", any violation of a class I or class II standard
57 or twenty or more violations of class III standards;

58 **(16) "Undue influence", the use of influence by someone who exercises authority**
59 **over a participant in order to take unfair advantage of that participant's vulnerable**
60 **state of mind, neediness, pain, or agony. The term "undue influence" includes, but is**
61 **not limited to, the improper or fraudulent use of a power of attorney, guardianship,**
62 **conservatorship, or other fiduciary authority.**

192.2256. 1. When any adult day care worker; advanced emergency medical
2 **technician; bank personnel; chiropractor; Christian Science practitioner; coroner;**
3 **dentist; embalmer; emergency medical technician; employee of the department of social**
4 **services, mental health, or health and senior services; employee of a local area agency on**
5 **aging or an organized area agency on aging program; firefighter; first responder, as**
6 **defined in section 192.2405; funeral director; home health agency or home health**
7 **agency employee; hospital and clinic personnel engaged in examination, care, or**
8 **treatment of persons; in-home services owner, provider, operator, or employee; law**
9 **enforcement officer; long-term care facility administrator or employee; medical**
10 **examiner; medical resident or intern; mental health professional; minister; nurse;**
11 **nurse practitioner; optometrist; other health practitioner; paramedic; peace officer;**
12 **pharmacist; physical therapist; physician; physician assistant; podiatrist; probation or**
13 **parole officer; psychologist; social worker; or other person with the care of a person**
14 **sixty years of age or older or an eligible adult, as defined in section 192.2400, has**
15 **reasonable cause to believe that a participant of an adult day care program has been**
16 **abused or neglected, he or she shall immediately report or cause a report to be made to**
17 **the department.**

18 **2. The report shall contain the name and address of the adult day care program,**
19 **the name of the participant, information regarding the nature of the abuse or neglect,**
20 **the name of the complainant, and any other information that might be helpful in an**
21 **investigation.**

22 **3. Any person required in subsection 1 of this section to report or cause a report**
23 **to be made to the department who knowingly fails to make a report within a reasonable**

24 time after the act of abuse or neglect as required in such subsection is guilty of a class A
25 misdemeanor.

26 4. In addition to the penalties imposed by this section, any adult day care
27 provider who knowingly conceals any act of abuse or neglect resulting in death or
28 serious physical injury, as defined in section 556.061, is guilty of a class E felony.

29 5. In addition to those persons required to report under subsection 1 of this
30 section, any other person having reasonable cause to believe that a participant has been
31 abused or neglected may report such information to the department.

32 6. Upon receipt of a report, the department shall initiate an investigation within
33 twenty-four hours and, as soon as possible during the course of the investigation, shall
34 notify the participant's next of kin or responsible party of the report and the
35 investigation and further notify the person whether the report was substantiated or
36 unsubstantiated unless such person is the alleged perpetrator of the abuse or neglect. As
37 provided in section 192.2425, substantiated reports of elder abuse shall be promptly
38 reported by the department to the appropriate law enforcement agency and prosecutor.

39 7. Reports, including investigation records, shall be confidential as provided
40 under section 192.2500.

41 8. Anyone, except any person who has abused or neglected a participant in an
42 adult day care program, who makes a report under this section or who testifies in any
43 administrative or judicial proceeding arising from the report shall be immune from any
44 civil or criminal liability for making such a report or for testifying except for liability for
45 perjury unless such person acted negligently, recklessly, in bad faith, or with malicious
46 purpose. It is a crime under section 565.189 for any person to knowingly file a false
47 report of elder abuse or neglect.

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

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

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

63 **12. The department shall maintain the employee disqualification list and place**
64 **on the employee disqualification list the names of any persons who are or have been**
65 **employed in any adult day care program and who have been finally determined by the**
66 **department under section 192.2490 to have knowingly or recklessly abused or neglected**
67 **a participant. For purposes of this section only, "knowingly" and "recklessly" shall**
68 **have the meanings that are ascribed to them in this section. A person acts "knowingly"**
69 **with respect to the person's conduct when a reasonable person should be aware of the**
70 **result caused by his or her conduct. A person acts "recklessly" when the person**
71 **consciously disregards a substantial and unjustifiable risk that the person's conduct will**
72 **result in serious physical injury and such disregard constitutes a gross deviation from**
73 **the standard of care that a reasonable person would exercise in the situation.**

74 **13. The timely self-reporting of incidents to the central registry by an adult day**
75 **care program shall continue to be investigated in accordance with department policy**
76 **and shall not be counted or reported by the department as a hotline call but rather a**
77 **self-reported incident. If the self-reported incident results in a regulatory violation,**
78 **such incident shall be reported as a substantiated report.**

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

4 **2. For each report, the department shall attempt to obtain the names and**
5 **addresses of the adult day care program, the employee of the adult day care program,**
6 **and the participant of the adult day care program; information regarding the nature of**
7 **the misappropriation; the name of the complainant; and any other information that**
8 **might be helpful in an investigation.**

9 **3. Any adult day care program or adult day care program employee who puts to**
10 **his or her own use or the use of the adult day care program or otherwise diverts from a**
11 **participant's use any personal property or funds of the participant is guilty of a class A**
12 **misdemeanor.**

13 **4. Upon receipt of a report, the department shall initiate an investigation and**
14 **report information gained from such investigation to appropriate law enforcement**
15 **authorities.**

16 **5. If the investigation indicates probable misappropriation of property or funds**
17 **of an adult day care program participant, the investigator shall refer the complaint**
18 **together with the investigator's report to the department director or the director's**
19 **designee for appropriate action.**

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

22 **7. Anyone, except any person participating in or benefiting from the**
23 **misappropriation of funds, who makes a report under this section or who testifies in**
24 **any administrative or judicial proceeding arising from the report shall be immune from**
25 **any civil or criminal liability for making such a report or for testifying except for**
26 **liability for perjury unless such person acted negligently, recklessly, in bad faith, or with**
27 **malicious purpose.**

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

31 **9. No person who directs or exercises any authority in an adult day care**
32 **program shall harass, dismiss, or retaliate against an adult day care program**
33 **participant or employee because such participant or employee or any member of**
34 **such participant's family has made a report of any violation or suspected violation of**
35 **laws, ordinances, or regulations applying to the adult day care program or any adult**
36 **day care program employee that the participant, the participant's family, or the**
37 **employee has reasonable cause to believe has been committed or has occurred.**

38 **10. The department shall maintain the employee disqualification list and place**
39 **on the employee disqualification list the names of any persons who are or have been**
40 **employed by an adult day care program, who have been finally determined by the**
41 **department under section 192.2490 to have misappropriated any property or funds of**
42 **an adult day care program participant, and who came to be known to the participant**
43 **directly or indirectly while employed by an adult day care program.**

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

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

4 (2) "Bullying", intimidation or harassment that causes a reasonable person to fear for
5 his or her physical safety or property and may consist of physical actions including gestures;
6 cyberbullying; oral, electronic, or written communication; and any threat of retaliation for
7 reporting of such acts;

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

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

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

12 (6) "Eligible adult", a person sixty years of age or older who is unable to protect his or
13 her own interests or adequately perform or obtain services which are necessary to meet his or

14 her essential human needs or an adult with a disability, as defined in section 192.2005,
15 between the ages of eighteen and fifty-nine who is unable to protect his or her own interests
16 or adequately perform or obtain services which are necessary to meet his or her essential
17 human needs;

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

22 **(a) Deceit;**

23 **(b) Coercion;**

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

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

28 **(e) Preventing another person from acquiring information pertinent to the**
29 **disposition of the property involved;**

30 **(f) Selling or otherwise transferring or encumbering property or failing to**
31 **disclose a lien, adverse claim, or other legal impediment to the enjoyment of the**
32 **property regardless of whether such impediment is valid or is a matter of official record;**

33 **(g) Promising performance that the offender does not intend to perform or**
34 **knows will not be performed. Failure to perform by itself is not sufficient evidence to**
35 **prove that the offender did not intend to perform; or**

36 **(h) Undue influence;**

37 **(8) "Home health agency", the same meaning as such term is defined in section**
38 **197.400;**

39 ~~[(8)]~~ **(9) "Home health agency employee", a person employed by a home health**
40 **agency;**

41 ~~[(9)]~~ **(10) "Home health patient", an eligible adult who is receiving services through**
42 **any home health agency;**

43 ~~[(10)]~~ **(11) "In-home services client", an eligible adult who is receiving services in his**
44 **or her private residence through any in-home services provider agency;**

45 ~~[(11)]~~ **(12) "In-home services employee", a person employed by an in-home services**
46 **provider agency;**

47 ~~[(12)]~~ **(13) "In-home services provider agency", a business entity under contract with**
48 **the department or with a Medicaid participation agreement, which employs persons to deliver**
49 **any kind of services provided for eligible adults in their private homes;**

50 ~~[(13)]~~ **(14)** "Least restrictive environment", a physical setting where protective
51 services for the eligible adult and accommodation is provided in a manner no more restrictive
52 of an individual's personal liberty and no more intrusive than necessary to achieve care and
53 treatment objectives;

54 ~~[(14)]~~ **(15)** "Likelihood of serious physical harm", one or more of the following:

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

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

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

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

69 ~~[(15)]~~ **(16)** "Neglect", the failure to provide services to an eligible adult by any
70 person, firm or corporation with a legal or contractual duty to do so, when such failure
71 presents either an imminent danger to the health, safety, or welfare of the client or a
72 substantial probability that death or serious physical harm would result;

73 ~~[(16)]~~ **(17)** "Protective services", services provided by the state or other governmental
74 or private organizations or individuals which are necessary for the eligible adult to meet his or
75 her essential human needs;

76 **(18) "Undue influence", the use of influence by someone who exercises authority**
77 **over an eligible adult in order to take unfair advantage of that eligible adult's vulnerable**
78 **state of mind, neediness, pain, or agony. The term "undue influence" includes, but is**
79 **not limited to, the improper or fraudulent use of a power of attorney, guardianship,**
80 **conservatorship, or other fiduciary authority.**

192.2475. 1. When any adult day care worker; **advanced emergency medical**
2 **technician; bank personnel;** chiropractor; Christian Science practitioner; coroner; dentist;
3 embalmer; emergency medical technician; employee of the departments of social services,
4 mental health, or health and senior services; employee of a local area agency on aging or an
5 organized area agency on aging program; firefighter; first responder, as defined in section
6 192.2405; funeral director; home health agency or home health agency employee; hospital

7 and clinic personnel engaged in examination, care, or treatment of persons; in-home services
8 owner, provider, operator, or employee; law enforcement officer; long-term care facility
9 administrator or employee; medical examiner; medical resident or intern; mental health
10 professional; minister; nurse; nurse practitioner; optometrist; other health practitioner;
11 **paramedic**; peace officer; pharmacist; physical therapist; physician; physician's assistant;
12 podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to
13 believe that an in-home services client has been abused or neglected, as a result of in-home
14 services, he or she shall immediately report or cause a report to be made to the department. If
15 the report is made by a physician of the in-home services client, the department shall maintain
16 contact with the physician regarding the progress of the investigation.

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

20 3. The report shall contain the names and addresses of the in-home services provider
21 agency, the in-home services employee, the in-home services client, the home health agency,
22 the home health agency employee, information regarding the nature of the abuse or neglect,
23 the name of the complainant, and any other information which might be helpful in an
24 investigation.

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

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

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

43 7. Anyone, except any person who has abused or neglected an in-home services client
44 or home health patient, who makes a report pursuant to this section or who testifies in any
45 administrative or judicial proceeding arising from the report shall be immune from any civil
46 or criminal liability for making such a report or for testifying except for liability for perjury,
47 unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

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

51 9. No person who directs or exercises any authority in an in-home services provider
52 agency or home health agency shall harass, dismiss or retaliate against an in-home services
53 client or home health patient, or an in-home services employee or a home health agency
54 employee because he or she or any member of his or her family has made a report of any
55 violation or suspected violation of laws, standards or regulations applying to the in-home
56 services provider agency or home health agency or any in-home services employee or home
57 health agency employee which he or she has reasonable cause to believe has been committed
58 or has occurred.

59 10. Any person who abuses or neglects an in-home services client or home health
60 patient is subject to criminal prosecution under section 565.184. If such person is an in-home
61 services employee and has been found guilty by a court, and if the supervising in-home
62 services provider willfully and knowingly failed to report known abuse by such employee to
63 the department, the supervising in-home services provider may be subject to administrative
64 penalties of one thousand dollars per violation to be collected by the department and the
65 money received therefor shall be paid to the director of revenue and deposited in the state
66 treasury to the credit of the general revenue fund. Any in-home services provider which has
67 had administrative penalties imposed by the department or which has had its contract
68 terminated may seek an administrative review of the department's action pursuant to chapter
69 621. Any decision of the administrative hearing commission may be appealed to the circuit
70 court in the county where the violation occurred for a trial de novo. For purposes of this
71 subsection, the term "violation" means a determination of guilt by a court.

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

76 12. The department shall maintain the employee disqualification list and place on the
77 employee disqualification list the names of any persons who have been finally determined by
78 the department, pursuant to section 192.2490, to have recklessly, knowingly or purposely
79 abused or neglected an in-home services client or home health patient while employed by an

80 in-home services provider agency or home health agency. For purposes of this section only,
81 "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this
82 section. A person acts "knowingly" with respect to the person's conduct when a reasonable
83 person should be aware of the result caused by his or her conduct. A person acts "recklessly"
84 when the person consciously disregards a substantial and unjustifiable risk that the person's
85 conduct will result in serious physical injury and such disregard constitutes a gross deviation
86 from the standard of care that a reasonable person would exercise in the situation.

87 13. At the time a client has been assessed to determine the level of care as required by
88 rule and is eligible for in-home services, the department shall conduct a safe at home
89 evaluation to determine the client's physical, mental, and environmental capacity. The
90 department shall develop the safe at home evaluation tool by rule in accordance with chapter
91 536. The purpose of the safe at home evaluation is to assure that each client has the
92 appropriate level of services and professionals involved in the client's care. The plan of
93 service or care for each in-home services client shall be authorized by a nurse. The
94 department may authorize the licensed in-home services nurse, in lieu of the department
95 nurse, to conduct the assessment of the client's condition and to establish a plan of services or
96 care. The department may use the expertise, services, or programs of other departments and
97 agencies on a case-by-case basis to establish the plan of service or care. The department may,
98 as indicated by the safe at home evaluation, refer any client to a mental health professional, as
99 defined in 9 CSR 30- 4.030, for evaluation and treatment as necessary.

100 14. Authorized nurse visits shall occur at least twice annually to assess the client and
101 the client's plan of services. The provider nurse shall report the results of his or her visits to
102 the client's case manager. If the provider nurse believes that the plan of service requires
103 alteration, the department shall be notified and the department shall make a client evaluation.
104 All authorized nurse visits shall be reimbursed to the in-home services provider. All
105 authorized nurse visits shall be reimbursed outside of the nursing home cap for in-home
106 services clients whose services have reached one hundred percent of the average statewide
107 charge for care and treatment in an intermediate care facility, provided that the services have
108 been preauthorized by the department.

109 15. All in-home services clients shall be advised of their rights by the department or
110 the department's designee at the initial evaluation. The rights shall include, but not be limited
111 to, the right to call the department for any reason, including dissatisfaction with the provider
112 or services. The department may contract for services relating to receiving such complaints.
113 The department shall establish a process to receive such nonabuse and neglect calls other than
114 the elder abuse and neglect hotline.

115 16. Subject to appropriations, all nurse visits authorized in sections 192.2400 to
116 192.2475 shall be reimbursed to the in-home services provider agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (5) Any mitigating circumstances;

57 (6) Any aggravating circumstances; and

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

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

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

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

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

73 (3) Employs health care providers as defined in section 376.1350 for temporary or
74 intermittent placement in health care facilities;

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

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

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

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

86

87 The information shall be disclosed only to the requesting entity. The department shall inform
88 any person listed above who inquires of the department whether or not a particular name is on
89 the list. The department may require that the request be made in writing **or by electronic**
90 **means**. No person, corporation, organization, or association who is entitled to access the
91 employee disqualification list may disclose the information to any person, corporation,
92 organization, or association who is not entitled to access the list. Any person, corporation,
93 organization, or association who is entitled to access the employee disqualification list who
94 discloses the information to any person, corporation, organization, or association who is not
95 entitled to access the list shall be guilty of an infraction.

96 12. No person, corporation, organization, or association who received the employee
97 disqualification list under subdivisions (1) to (7) of subsection 11 of this section shall
98 knowingly employ any person who is on the employee disqualification list. Any person,
99 corporation, organization, or association who received the employee disqualification list
100 under subdivisions (1) to (7) of subsection 11 of this section, or any person responsible for
101 providing health care service, who declines to employ or terminates a person whose name is
102 listed in this section shall be immune from suit by that person or anyone else acting for or in
103 behalf of that person for the failure to employ or for the termination of the person whose
104 name is listed on the employee disqualification list.

105 13. Any employer or vendor as defined **or described** in sections 197.250, 197.400,
106 198.006, 208.900, or 192.2400 required to deny employment to an applicant or to discharge
107 an employee, provisional or otherwise, as a result of information obtained through any
108 portion of the background screening and employment eligibility determination process under
109 section 210.903, or subsequent, periodic screenings, shall not be liable in any action brought

110 by the applicant or employee relating to discharge where the employer is required by law to
111 terminate the employee, provisional or otherwise, and shall not be charged for unemployment
112 insurance benefits based on wages paid to the employee for work prior to the date of
113 discharge, pursuant to section 288.100, if the employer terminated the employee because the
114 employee:

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

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

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

121 (4) Has a disqualifying finding under this section, section 192.2495, or is on any of
122 the background check lists in the family care safety registry under sections 210.900 to
123 210.936; or

124 (5) Was denied a good cause waiver as provided for in subsection 10 of section
125 192.2495.

126 14. Any person who has been listed on the employee disqualification list may request
127 that the director **of the department or the director's designee** remove his or her name from
128 the employee disqualification list. The request shall be written and may not be made more
129 than once every twelve months. The request will be granted by the director **of the**
130 **department or the director's designee** upon a clear showing, by written submission only,
131 that the person will not commit additional acts of abuse, neglect, misappropriation of the
132 property or funds, or the falsification of any documents of service delivery to an in-home
133 services client. The director **of the department or the director's designee** may make
134 conditional the removal of a person's name from the list on any terms that the director **of the**
135 **department or the director's designee** deems appropriate, and failure to comply with such
136 terms may result in the person's name being relisted. The ~~director's~~ determination of
137 whether to remove the person's name from the list is not subject to appeal.

192.2495. 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;

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

6 (3) Employs health care providers as defined in section 376.1350 for temporary or
7 intermittent placement in health care facilities;

8 (4) Is an entity licensed pursuant to chapter 197;

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

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

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

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

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

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

40 4. When the provider requests a criminal background check pursuant to section
41 43.540, the requesting entity may require that the applicant reimburse the provider for the cost
42 of such record check. When a provider requests a nationwide criminal background check
43 pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any
44 background check required pursuant to this section shall not exceed five dollars which shall

45 be paid to the state. State funding and the obligation of a provider to obtain a nationwide
46 criminal background check shall be subject to the availability of appropriations.

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

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

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

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

57 (4) Disclose if the applicant is listed on any of the background checks in the family
58 care safety registry established under section 210.903. A provider not otherwise prohibited
59 from employing an individual listed on such background checks may deny employment to an
60 individual listed on any of the background checks in such registry.

61 6. An applicant who knowingly fails to disclose his or her criminal history as required
62 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a
63 class A misdemeanor if the provider knowingly hires or retains a person to have contact with
64 patients or residents and the person has been found guilty in this state or any other state or has
65 been found guilty of a crime, which if committed in Missouri would be a class A or B felony
66 violation of chapter 565, 566, or ~~569~~ 579, or any violation of subsection 3 of section
67 198.070 ~~[ø]~~, section 568.020, **section 565.184, section 566.115, or section 566.116.**

68 7. Any in-home services provider agency or home health agency shall be guilty of a
69 class A misdemeanor if such agency knowingly employs a person to provide in-home
70 services or home health services to any in-home services client or home health patient and
71 such person either refuses to register with the family care safety registry or if such person:

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

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

75 (3) Has been found guilty of or pleaded guilty or nolo contendere to any felony
76 offense under section 568.045, 568.050, 568.060, 568.175, 570.023, 570.025, 570.030,
77 570.040 as it existed prior to January 1, 2017, 570.090, 570.145, 570.223, 575.230, or
78 576.080;

79 (4) Has been found guilty of or pleaded guilty or nolo contendere to a violation of
80 section 577.010 or 577.012 and who is alleged and found by the court to be an aggravated or
81 chronic offender under section 577.023;

82 (5) Has been found guilty of or pleaded guilty or nolo contendere to any offense
83 requiring registration under section 589.400;

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

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

88 (8) Has a finding on the child abuse and neglect registry under sections 210.109 to
89 210.183.

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

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

96 10. Except for the hiring restriction based on the department of health and senior
97 services employee disqualification list established pursuant to section 192.2490, the
98 department of health and senior services shall promulgate rules and regulations to waive
99 the hiring restrictions pursuant to this section for good cause. For purposes of this section,
100 "good cause" means the department has made a determination by examining the employee's
101 prior work history and other relevant factors that such employee does not present a risk to the
102 health or safety of residents.

192.2500. 1. Reports, **including investigation records**, confidential under [~~section~~
2 ~~198.070 and~~] sections **192.2256, 192.2257, 192.2475 to 192.2490, 197.550, 198.070,**
3 **198.090, 208.912, and 208.915, and any other record or report related to the inclusion of**
4 **an individual on the employee disqualification list**, shall not be deemed a public record and
5 shall not be subject to the provisions of section 109.180 or chapter 610. The name of the
6 complainant or any person mentioned in the reports shall not be disclosed unless:

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

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

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

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

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

17 (6) Release of a name is requested for the purpose of licensure under chapter 210.
18 2. The department shall, upon request, provide to the division of employment security
19 within the department of labor and industrial relations copies of the investigative reports that
20 led to an employee being placed on the disqualification list.

197.312. A certificate of need shall not be required for any institution previously
2 owned and operated for or in behalf of a city not within a county which chooses to be licensed
3 as a facility defined under subdivision [~~(22)-or~~] (23) **or (24)** of section 198.006 for a facility
4 of ninety beds or less that is owned or operated by a not-for-profit corporation which is
5 exempt from federal income tax as an organization described in section 501(c)(3) of the
6 Internal Revenue Code of 1986, which is controlled directly by a religious organization and
7 which has received approval by the department of health and senior services of plans for
8 construction of such facility by August 1, 1995, and is licensed by the department of health
9 and senior services by July 1, 1996, as a facility defined under subdivision [~~(22)-or~~] (23) **or**
10 **(24)** of section 198.006 or for a facility, serving exclusively mentally ill, homeless persons, of
11 sixteen beds or less that is owned or operated by a not-for-profit corporation which is exempt
12 from federal income tax which is described in section 501(c)(3) of the Internal Revenue Code
13 of 1986, which is controlled directly by a religious organization and which has received
14 approval by the department of health and senior services of plans for construction of such
15 facility by May 1, 1996, and is licensed by the department of health and senior services by
16 July 1, 1996, as a facility defined under subdivision [~~(22)-or~~] (23) **or (24)** of section 198.006
17 or an assisted living facility located in a city not within a county operated by a not for profit
18 corporation which is exempt from federal income tax which is described in section 501(c)(3)
19 of the Internal Revenue Code of 1986, which is controlled directly by a religious organization
20 and which is licensed for one hundred beds or less on or before August 28, 1997.

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

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

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

13 **4. Upon receipt of a report, the department shall initiate an investigation and**
14 **report information gained from such investigation to appropriate law enforcement**
15 **authorities.**

16 **5. If the investigation indicates probable misappropriation of property or funds**
17 **of a patient, the investigator shall refer the complaint together with the investigator's**
18 **report to the department director or the director's designee for appropriate action.**

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

21 **7. Anyone, except any person participating in or benefiting from the**
22 **misappropriation of funds, who makes a report under this section or who testifies in**
23 **any administrative or judicial proceeding arising from the report shall be immune from**
24 **any civil or criminal liability for making such a report or for testifying except for**
25 **liability for perjury unless such person acted negligently, recklessly, in bad faith, or with**
26 **malicious purpose.**

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

30 **9. No person who directs or exercises any authority in a facility or provider**
31 **licensed under this chapter shall harass, dismiss, or retaliate against a patient or**
32 **employee because such patient or employee or any member of the patient's family has**
33 **made a report of any violation or suspected violation of laws, ordinances, or regulations**
34 **applying to the facility, provider, or any employee that the patient, the patient's family,**
35 **or the employee has reasonable cause to believe has been committed or has occurred.**

36 **10. The department shall maintain the employee disqualification list and place**
37 **on the employee disqualification list the names of any persons who are or have been**
38 **employed by a facility or provider licensed under this chapter, who have been finally**
39 **determined by the department under section 192.2490 to have misappropriated any**
40 **property or funds of a patient, and who came to be known to the patient directly or**
41 **indirectly while employed by the facility or provider.**

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

3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm **including,**
4 **but not limited to, financial exploitation by any person, firm, or corporation;**

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

7 (a) Eating;

8 (b) Dressing;

- 9 (c) Bathing;
- 10 (d) Toileting;
- 11 (e) Transferring; and
- 12 (f) Walking;
- 13 (3) "Administrator", the person who is in general administrative charge of a facility;
- 14 (4) "Affiliate":
- 15 (a) With respect to a partnership, each partner thereof;
- 16 (b) With respect to a limited partnership, the general partner and each limited partner
- 17 with an interest of five percent or more in the limited partnership;
- 18 (c) With respect to a corporation, each person who owns, holds or has the power to
- 19 vote five percent or more of any class of securities issued by the corporation, and each officer
- 20 and director;
- 21 (d) With respect to a natural person, any parent, child, sibling, or spouse of that
- 22 person;
- 23 (5) "Appropriately trained and qualified individual", an individual who is licensed or
- 24 registered with the state of Missouri in a health care-related field or an individual with a
- 25 degree in a health care-related field or an individual with a degree in a health care, social
- 26 services, or human services field or an individual licensed under chapter 344 and who has
- 27 received facility orientation training under 19 CSR 30-86.047, and dementia training under
- 28 section 192.2000 and twenty-four hours of additional training, approved by the department,
- 29 consisting of definition and assessment of activities of daily living, assessment of cognitive
- 30 ability, service planning, and interview skills;
- 31 (6) "Assisted living facility", any premises, other than a residential care facility,
- 32 intermediate care facility, or skilled nursing facility, that is utilized by its owner, operator, or
- 33 manager to provide twenty-four-hour care and services and protective oversight to three or
- 34 more residents who are provided with shelter, board, and who may need and are provided
- 35 with the following:
- 36 (a) Assistance with any activities of daily living and any instrumental activities of
- 37 daily living;
- 38 (b) Storage, distribution, or administration of medications; and
- 39 (c) Supervision of health care under the direction of a licensed physician, provided
- 40 that such services are consistent with a social model of care;
- 41
- 42 Such term shall not include a facility where all of the residents are related within the fourth
- 43 degree of consanguinity or affinity to the owner, operator, or manager of the facility;
- 44 (7) "Community-based assessment", documented basic information and analysis
- 45 provided by appropriately trained and qualified individuals describing an individual's abilities

46 and needs in activities of daily living, instrumental activities of daily living, vision/hearing,
47 nutrition, social participation and support, and cognitive functioning using an assessment tool
48 approved by the department of health and senior services that is designed for community-
49 based services and that is not the nursing home minimum data set;

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

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

54 (10) "Emergency", a situation, physical condition or one or more practices, methods
55 or operations which presents imminent danger of death or serious physical or mental harm to
56 residents of a facility;

57 (11) "Facility", any residential care facility, assisted living facility, intermediate care
58 facility, or skilled nursing facility;

59 (12) **"Financial exploitation", when a person knowingly obtains control over the**
60 **property of a resident with the intent to deprive the resident of the use, benefit, or**
61 **possession of his or her property, thereby benefiting the offender or detrimentally**
62 **affecting the resident by means of:**

63 (a) **Deceit;**

64 (b) **Coercion;**

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

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

69 (e) **Preventing another person from acquiring information pertinent to the**
70 **disposition of the property involved;**

71 (f) **Selling or otherwise transferring or encumbering property or failing to**
72 **disclose a lien, adverse claim, or other legal impediment to the enjoyment of the**
73 **property regardless of whether such impediment is valid or is a matter of official record;**

74 (g) **Promising performance that the offender does not intend to perform or**
75 **knows will not be performed. Failure to perform by itself is not sufficient evidence to**
76 **prove that the offender did not intend to perform; or**

77 (h) **Undue influence;**

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

80 [~~13~~] (14) "Instrumental activities of daily living", or "IADL", one or more of the
81 following activities:

82 (a) Preparing meals;

- 83 (b) Shopping for personal items;
84 (c) Medication management;
85 (d) Managing money;
86 (e) Using the telephone;
87 (f) Housework; and
88 (g) Transportation ability;

89 ~~[(14)]~~ **(15)** "Intermediate care facility", any premises, other than a residential care
90 facility, assisted living facility, or skilled nursing facility, which is utilized by its owner,
91 operator, or manager to provide twenty-four-hour accommodation, board, personal care, and
92 basic health and nursing care services under the daily supervision of a licensed nurse and
93 under the direction of a licensed physician to three or more residents dependent for care and
94 supervision and who are not related within the fourth degree of consanguinity or affinity to
95 the owner, operator or manager of the facility;

96 ~~[(15)]~~ **(16)** "Manager", any person other than the administrator of a facility who
97 contracts or otherwise agrees with an owner or operator to supervise the general operation of
98 a facility, providing such services as hiring and training personnel, purchasing supplies,
99 keeping financial records, and making reports;

100 ~~[(16)]~~ **(17)** "Medicaid", medical assistance under section 208.151, et seq., in
101 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act
102 (42 U.S.C. Section 301, et seq.), as amended;

103 ~~[(17)]~~ **(18)** "Neglect", the failure to provide, by those responsible for the care,
104 custody, and control of a resident in a facility, the services which are reasonable and necessary
105 to maintain the physical and mental health of the resident, when such failure presents either
106 an imminent danger to the health, safety or welfare of the resident or a substantial probability
107 that death or serious physical harm would result;

108 ~~[(18)]~~ **(19)** "Operator", any person licensed or required to be licensed under the
109 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

110 ~~[(19)]~~ **(20)** "Owner", any person who owns an interest of five percent or more in:

- 111 (a) The land on which any facility is located;
112 (b) The structure or structures in which any facility is located;
113 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
114 the land or structure in or on which a facility is located; or
115 (d) Any lease or sublease of the land or structure in or on which a facility is located.

116

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

120 ~~[(20)]~~ **(21)** "Protective oversight", an awareness twenty-four hours a day of the
121 location of a resident, the ability to intervene on behalf of the resident, the supervision of
122 nutrition, medication, or actual provisions of care, and the responsibility for the welfare of the
123 resident, except where the resident is on voluntary leave;

124 ~~[(21)]~~ **(22)** "Resident", a person who by reason of aging, illness, disease, or physical
125 or mental infirmity receives or requires care and services furnished by a facility and who
126 resides or boards in or is otherwise kept, cared for, treated or accommodated in such facility
127 for a period exceeding twenty-four consecutive hours;

128 ~~[(22)]~~ **(23)** "Residential care facility", any premises, other than an assisted living
129 facility, intermediate care facility, or skilled nursing facility, which is utilized by its owner,
130 operator or manager to provide twenty-four-hour care to three or more residents, who are not
131 related within the fourth degree of consanguinity or affinity to the owner, operator, or
132 manager of the facility and who need or are provided with shelter, board, and with protective
133 oversight, which may include storage and distribution or administration of medications and
134 care during short-term illness or recuperation, except that, for purposes of receiving
135 supplemental welfare assistance payments under section 208.030, only any residential care
136 facility licensed as a residential care facility II immediately prior to August 28, 2006, and that
137 continues to meet such licensure requirements for a residential care facility II licensed
138 immediately prior to August 28, 2006, shall continue to receive after August 28, 2006, the
139 payment amount allocated immediately prior to August 28, 2006, for a residential care facility
140 II under section 208.030;

141 ~~[(23)]~~ **(24)** "Skilled nursing facility", any premises, other than a residential care
142 facility, an assisted living facility, or an intermediate care facility, which is utilized by its
143 owner, operator or manager to provide for twenty-four-hour accommodation, board and
144 skilled nursing care and treatment services to at least three residents who are not related
145 within the fourth degree of consanguinity or affinity to the owner, operator or manager of the
146 facility. Skilled nursing care and treatment services are those services commonly performed
147 by or under the supervision of a registered professional nurse for individuals requiring
148 twenty-four-hours-a-day care by licensed nursing personnel including acts of observation,
149 care and counsel of the aged, ill, injured or infirm, the administration of medications and
150 treatments as prescribed by a licensed physician or dentist, and other nursing functions
151 requiring substantial specialized judgment and skill;

152 ~~[(24)]~~ **(25)** "Social model of care", long-term care services based on the abilities,
153 desires, and functional needs of the individual delivered in a setting that is more home-like
154 than institutional and promotes the dignity, individuality, privacy, independence, and
155 autonomy of the individual. Any facility licensed as a residential care facility II prior to

156 August 28, 2006, shall qualify as being more home-like than institutional with respect to
157 construction and physical plant standards;

158 ~~[(25)]~~ **(26) "Undue influence", the use of influence by someone who exercises**
159 **authority over a resident in order to take unfair advantage of that resident's vulnerable**
160 **state of mind, neediness, pain, or agony. The term "undue influence" includes, but is**
161 **not limited to, the improper or fraudulent use of a power of attorney, guardianship,**
162 **conservatorship, or other fiduciary authority;**

163 **(27) "Vendor", any person selling goods or services to a health care provider;**

164 ~~[(26)]~~ **(28) "Voluntary leave", an off-premise leave initiated by:**

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

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

198.018. 1. Applications for a license shall be made to the department by the
2 operator upon such forms and including such information and documents as the department
3 may reasonably require by rule or regulation for the purposes of administering sections
4 198.003 to 198.186, section 198.200, and sections 208.030 and 208.159.

5 2. The applicant shall submit all documents required by the department under this
6 section attesting by signature that the statements contained in the application are true and
7 correct to the best of the applicant's knowledge and belief, and that all required documents are
8 either included with the application or are currently on file with the department.

9 3. The application shall be accompanied by a license fee in an amount established by
10 the department. The fee established by the department shall not exceed six hundred dollars,
11 and shall be a graduated fee based on the licensed capacity of the applicant and the duration
12 of the license. A fee of not more than fifty dollars shall be charged for any amendments to a
13 license initiated by an applicant. In addition, facilities certified to participate in the Medicaid
14 or Medicare programs shall pay a certification fee of up to one thousand dollars annually,
15 payable on or before October first of each year. The amount remitted for the license fee, fee
16 for amendments to a license, or certification fee shall be deposited in the state treasury to the
17 credit of the "Nursing Facility Quality of Care Fund", which is hereby created. All
18 investment earnings of the nursing facility quality of care fund shall be credited to such fund.
19 All moneys in the nursing facility quality of care fund shall, upon appropriation, be used by
20 the department of health and senior services for conducting inspections and surveys, and
21 providing training and technical assistance to facilities licensed under the provisions of this
22 chapter. The unexpended balance in the nursing facility quality of care fund at the end of the
23 biennium is exempt from the provisions of sections 33.080. The unexpended balance in the

24 nursing facility quality of care fund shall not revert to the general revenue fund, but shall
25 accumulate in the nursing facility quality of care fund from year to year.

26 4. Within ten working days of the effective date of any document that replaces,
27 succeeds, or amends any of the documents required by the department to be filed pursuant to
28 this section, an operator shall file with the department a copy of such document. The operator
29 shall attest by signature that the document is true and correct. If the operator knowingly fails
30 to file a required document or provide any information amending any document within the
31 time provided for in this section, a circuit court may, upon application of the department or
32 the attorney general, assess a penalty of up to fifty dollars per document for each day past the
33 required date of filing.

34 5. If an operator fails to file documents or amendments to documents as required
35 pursuant to this section and such failure is part of a pattern or practice of concealment, such
36 failure shall be sufficient grounds for revocation of a license or disapproval of an application
37 for a license.

38 6. Any facility defined in subdivision (6), [~~(14), (22), or~~] **(15)**, (23), **or (24)** of section
39 198.006 that is licensed by the state of Missouri pursuant to the provisions of section 198.015
40 may not be licensed, certified or registered by any other political subdivision of the state of
41 Missouri whether or not it has taxing power, provided, however, that nothing in this
42 subsection shall prohibit a county or city, otherwise empowered under law, to inspect such
43 facility for compliance with local ordinances of food service or fire safety.

198.070. 1. When any adult day care worker; **advanced emergency medical**
2 **technician; bank personnel;** chiropractor; Christian Science practitioner; coroner; dentist;
3 embalmer; **emergency medical technician;** employee of the departments of social services,
4 mental health, or health and senior services; employee of a local area agency on aging or an
5 organized area agency on aging program; **firefighter; first responder, as defined in section**
6 **192.2405;** funeral director; home health agency or home health agency employee; hospital
7 and clinic personnel engaged in examination, care, or treatment of persons; in-home services
8 owner, provider, operator, or employee; law enforcement officer; long-term care facility
9 administrator or employee; medical examiner; medical resident or intern; mental health
10 professional; minister; nurse; nurse practitioner; optometrist; other health practitioner;
11 **paramedic;** peace officer; pharmacist; physical therapist; physician; physician's assistant;
12 podiatrist; probation or parole officer; psychologist; social worker; or other person with the
13 care of a person sixty years of age or older or an eligible adult, as defined in section 192.2400,
14 has reasonable cause to believe that a resident of a facility has been abused or neglected, he or
15 she shall immediately report or cause a report to be made to the department.

16 2. (1) The report shall contain the name and address of the facility, the name of the
17 resident, information regarding the nature of the abuse or neglect, the name of the
18 complainant, and any other information which might be helpful in an investigation.

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

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

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

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

31 6. Upon receipt of a report, the department shall initiate an investigation within
32 twenty-four hours and, as soon as possible during the course of the investigation, shall notify
33 the resident's next of kin or responsible party of the report and the investigation and further
34 notify them whether the report was substantiated or unsubstantiated unless such person is the
35 alleged perpetrator of the abuse or neglect. As provided in section 192.2425, substantiated
36 reports of elder abuse shall be promptly reported by the department to the appropriate law
37 enforcement agency and prosecutor.

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

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

50 9. Anyone, except any person who has abused or neglected a resident in a facility,
51 who makes a report pursuant to this section or who testifies in any administrative or judicial
52 proceeding arising from the report shall be immune from any civil or criminal liability for

53 making such a report or for testifying except for liability for perjury, unless such person acted
54 negligently, recklessly, in bad faith or with malicious purpose. It is a crime under section
55 565.189 for any person to knowingly file a false report of elder abuse or neglect.

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

59 11. No person who directs or exercises any authority in a facility shall evict, harass,
60 dismiss or retaliate against a resident or employee because such resident or employee or any
61 member of such resident's or employee's family has made a report of any violation or
62 suspected violation of laws, ordinances or regulations applying to the facility which the
63 resident, the resident's family or an employee has reasonable cause to believe has been
64 committed or has occurred. Through the existing department information and referral
65 telephone contact line, residents, their families and employees of a facility shall be able to
66 obtain information about their rights, protections and options in cases of eviction, harassment,
67 dismissal or retaliation due to a report being made pursuant to this section.

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

70 13. The department shall maintain the employee disqualification list and place on the
71 employee disqualification list the names of any persons who are or have been employed in
72 any facility and who have been finally determined by the department pursuant to section
73 192.2490 to have knowingly or recklessly abused or neglected a resident. For purposes of
74 this section only, "knowingly" and "recklessly" shall have the meanings that are ascribed to
75 them in this section. A person acts "knowingly" with respect to the person's conduct when a
76 reasonable person should be aware of the result caused by his or her conduct. A person acts
77 "recklessly" when the person consciously disregards a substantial and unjustifiable risk that
78 the person's conduct will result in serious physical injury and such disregard constitutes a
79 gross deviation from the standard of care that a reasonable person would exercise in the
80 situation.

81 14. The timely self-reporting of incidents to the central registry by a facility shall
82 continue to be investigated in accordance with department policy, and shall not be counted or
83 reported by the department as a hot-line call but rather a self-reported incident. If the self-
84 reported incident results in a regulatory violation, such incident shall be reported as a
85 substantiated report.

198.073. 1. A residential care facility shall admit or retain only those persons who
2 are capable mentally and physically of negotiating a normal path to safety using assistive
3 devices or aids when necessary, and who may need assisted personal care within the
4 limitations of such facilities, and who do not require hospitalization or skilled nursing care.

5 2. Notwithstanding the provisions of subsection 1 of this section, those persons
6 previously qualified for residence who may have a temporary period of incapacity due to
7 illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to
8 remain in a residential care facility or assisted living facility if approved by a physician.

9 3. Any facility licensed as a residential care facility II on August 27, 2006, shall be
10 granted a license as an assisted living facility, as defined in section 198.006, on August 28,
11 2006, regardless of the laws, rules, and regulations for licensure as an assisted living facility
12 as long as such facility continues to meet all laws, rules, and regulations that were in place on
13 August 27, 2006, for a residential care facility II. At such time that the average total
14 reimbursement, not including residents' cost-of-living increases in their benefits from the
15 Social Security Administration after August 28, 2006, for the care of persons eligible for
16 Medicaid in an assisted living facility is equal to or exceeds forty-one dollars per day, all
17 facilities with a license as an assisted living facility shall meet all laws, rules, and regulations
18 for licensure as an assisted living facility. Nothing in this section shall be construed to allow
19 any facility that has not met the requirements of subsections 4 and 6 of this section to care for
20 any individual with a physical, cognitive, or other impairment that prevents the individual
21 from safely evacuating the facility.

22 4. Any facility licensed as an assisted living facility, as defined in section 198.006,
23 except for facilities licensed under subsection 3 of this section, may admit or retain an
24 individual for residency in an assisted living facility only if the individual does not require
25 hospitalization or skilled nursing placement, and only if the facility:

26 (1) Provides for or coordinates oversight and services to meet the needs of the
27 resident as documented in a written contract signed by the resident, or legal representative of
28 the resident;

29 (2) Has twenty-four-hour staff appropriate in numbers and with appropriate skills to
30 provide such services;

31 (3) Has a written plan for the protection of all residents in the event of a disaster,
32 including keeping residents in place, evacuating residents to areas of refuge, evacuating
33 residents from the building if necessary, or other methods of protection based on the disaster
34 and the individual building design;

35 (4) Completes a pre-move-in screening with participation of the prospective resident;

36 (5) Completes for each resident a community-based assessment, as defined in
37 subdivision (7) of section 198.006:

38 (a) Upon admission;

39 (b) At least semiannually; and

40 (c) Whenever a significant change has occurred in the resident's condition which may
41 require a change in services;

42 (6) Based on the assessment in subsection 7 of this section and subdivision (5) of this
43 subsection, develops an individualized service plan in partnership with the resident, or legal
44 representative of the resident, that outlines the needs and preferences of the resident. The
45 individualized service plan will be reviewed with the resident, or legal representative of the
46 resident, at least annually, or when there is a significant change in the resident's condition
47 which may require a change in services. The signatures of an authorized representative of the
48 facility and the resident, or the resident's legal representative, shall be contained on the
49 individualized service plan to acknowledge that the service plan has been reviewed and
50 understood by the resident or legal representative;

51 (7) Makes available and implements self-care, productive and leisure activity
52 programs which maximize and encourage the resident's optimal functional ability;

53 (8) Ensures that the residence does not accept or retain a resident who:

54 (a) Has exhibited behaviors that present a reasonable likelihood of serious harm to
55 himself or herself or others;

56 (b) Requires physical restraint;

57 (c) Requires chemical restraint. As used in this paragraph, the following terms mean:

58 a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or
59 convenience and not required to treat medical symptoms;

60 b. "Convenience", any action taken by the facility to control resident behavior or
61 maintain residents with a lesser amount of effort by the facility and not in the resident's best
62 interest;

63 c. "Discipline", any action taken by the facility for the purpose of punishing or
64 penalizing residents;

65 (d) Requires skilled nursing services as defined in subdivision [~~(23)~~] (24) of section
66 198.006 for which the facility is not licensed or able to provide;

67 (e) Requires more than one person to simultaneously physically assist the resident
68 with any activity of daily living, with the exception of bathing and transferring;

69 (f) Is bed-bound or similarly immobilized due to a debilitating or chronic condition;
70 and

71 (9) Develops and implements a plan to protect the rights, privacy, and safety of all
72 residents and to protect against the financial exploitation of all residents;

73 (10) Complies with the training requirements of subsection 7 of section 192.2000.

74 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of this section
75 shall be made for residents on hospice, provided the resident, designated representative, or
76 both, and the assisted living provider, physician, and licensed hospice provider all agree that
77 such program of care is appropriate for the resident.

78 6. If an assisted living facility accepts or retains any individual with a physical,
79 cognitive, or other impairment that prevents the individual from safely evacuating the facility
80 with minimal assistance, the facility shall:

81 (1) Have sufficient staff present and awake twenty-four hours a day to assist in the
82 evacuation;

83 (2) Include an individualized evacuation plan in the service plan of the resident; and

84 (3) Take necessary measures to provide residents with the opportunity to explore the
85 facility and, if appropriate, its grounds; and

86 (4) Use a personal electronic monitoring device for any resident whose physician
87 recommends the use of such device.

88 7. An individual admitted or readmitted to the facility shall have an admission
89 physical examination by a licensed physician. Documentation should be obtained prior to
90 admission but shall be on file not later than ten days after admission and shall contain
91 information regarding the individual's current medical status and any special orders or
92 procedures that should be followed. If the individual is admitted directly from a hospital or
93 another long-term care facility and is accompanied on admission by a report that reflects his
94 or her current medical status, an admission physical shall not be required.

95 8. Facilities licensed as an assisted living facility shall disclose to a prospective
96 resident, or legal representative of the resident, information regarding the services the facility
97 is able to provide or coordinate, the costs of such services to the resident, and the resident
98 conditions that will require discharge or transfer, including the provisions of subdivision (8)
99 of subsection 4 of this section.

100 9. After January 1, 2008, no entity shall hold itself out as an assisted living facility or
101 advertise itself as an assisted living facility without obtaining a license from the department to
102 operate as an assisted living facility. Any residential care facility II licensed under this
103 chapter that does not use the term assisted living in the name of its licensed facility on or
104 before May 1, 2006, shall be prohibited from using such term after August 28, 2006, unless
105 such facility meets the requirements for an assisted living facility in subsection 4 of this
106 section. Any facility licensed as an intermediate care facility prior to August 28, 2006, that
107 provides the services of an assisted living facility, as described in paragraphs (a), (b), and (c)
108 of subdivision (6) of section 198.006, utilizing the social model of care, may advertise itself
109 as an assisted living facility without obtaining a license from the department to operate as an
110 assisted living facility.

111 10. The department of health and senior services shall promulgate rules to ensure
112 compliance with this section. Any rule or portion of a rule, as that term is defined in section
113 536.010, that is created under the authority delegated in this section shall become effective
114 only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,

115 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
 116 vested with the general assembly pursuant to chapter 536 to review, to delay the effective
 117 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant
 118 of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be
 119 invalid and void.

198.640. As used in sections 198.640 to 198.648, the following terms shall mean:

- 2 (1) "Controlling person", a business entity, officer, program administrator, or director
 3 whose responsibilities include the direction of the management or policies of a supplemental
 4 health care services agency. The term controlling person also means an individual who,
 5 directly or indirectly, beneficially owns an interest in a corporation, partnership, or other
 6 business association that is a controlling person;
- 7 (2) "Department", the department of health and senior services;
- 8 (3) "Health care facility", a licensed hospital defined under section 197.020 or a
 9 licensed entity defined under subdivision (6), [~~(14), (22), or~~] (15), (23), or (24) of section
 10 198.006;
- 11 (4) "Health care personnel", any individual licensed, accredited, or certified by the
 12 state of Missouri to perform specified health services consistent with state law;
- 13 (5) "Person", an individual, firm, corporation, partnership, or association;
- 14 (6) "Supplemental health care services agency" or "agency", a person, firm,
 15 corporation, partnership, or association engaged for hire in the business of providing or
 16 procuring temporary employment in health care facilities for health care personnel, including
 17 a temporary nursing staffing agency as defined in section 383.130, or that operates a digital
 18 website or digital smartphone application that facilitates the provision of the engagement of
 19 health care personnel and accepts requests for health care personnel through its digital
 20 website or digital smartphone application. The term supplemental health care services agency
 21 or agency shall not include an individual who engages, only on his or her own behalf, to
 22 provide the individual's services on a temporary basis to health care facilities or a home health
 23 agency licensed under section 197.415 and shall not include a person, firm, corporation,
 24 partnership, or association engaged in the provision of contracted specialty services by a
 25 practitioner as defined under subdivision (4) of section 376.1575, to a hospital as defined
 26 under section 197.020, or to other individuals or entities providing health care that are not
 27 health care facilities.

208.912. 1. When any adult day care worker; **advanced emergency medical**
 2 **technician; bank personnel;** chiropractor[~~;~~]; Christian Science practitioner[~~;~~]; coroner[~~;~~];
 3 dentist[~~;~~]; embalmer[~~;~~]; **emergency medical technician;** employee of the departments of
 4 social services, mental health, or health and senior services; employee of a local area agency
 5 on aging or an organized area agency on aging program; **firefighter; first responder, as**

6 **defined in section 192.2405**; funeral director; home health agency or home health agency
7 employee; hospital and clinic personnel engaged in examination, care, or treatment of
8 persons; in-home services owner, provider, operator, or employee; law enforcement officer;
9 long-term care facility administrator or employee; medical examiner; medical resident or
10 intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other
11 health practitioner; **paramedic**; peace officer; pharmacist; physical therapist; physician;
12 physician's assistant; podiatrist; probation or parole officer; psychologist; vendor as defined
13 in section 208.900; personal care attendant; or social worker has reasonable cause to believe
14 that a consumer has been abused or neglected as defined in section 192.2400 as a result of the
15 delivery of or failure to deliver personal care assistance services, he or she shall immediately
16 report or cause a report to be made to the department. If the report is made by a physician of
17 the consumer, the department shall maintain contact with the physician regarding the progress
18 of the investigation.

19 2. When a report of deteriorating physical condition resulting in possible abuse or
20 neglect of a consumer is received by the department, the department's case manager and the
21 department nurse shall be notified. The case manager shall investigate and immediately
22 report the results of the investigation to the department nurse.

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

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

29 5. The report shall contain the names and addresses of the vendor, the personal care
30 attendant, and the consumer, and information regarding the nature of the abuse or neglect, the
31 name of the complainant, and any other information which might be helpful in an
32 investigation.

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

36 7. If the investigation indicates possible abuse or neglect of a consumer, the
37 investigator shall refer the complaint together with his or her report to the department director
38 or his or her designee for appropriate action. If, during the investigation or at its completion,
39 the department has reasonable cause to believe that immediate action is necessary to protect
40 the consumer from abuse or neglect, the department or the local prosecuting attorney may, or
41 the attorney general upon request of the department shall, file a petition for temporary care
42 and protection of the consumer in a circuit court of competent jurisdiction. The circuit court

43 in which the petition is filed shall have equitable jurisdiction to issue an ex parte order
44 granting the department authority for the temporary care and protection of **the** consumer, for a
45 period not to exceed thirty days.

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

48 9. Anyone, except any person who has abused or neglected a consumer, who makes a
49 report pursuant to this section or who testifies in any administrative or judicial proceeding
50 arising from the report shall be immune from any civil or criminal liability for making such a
51 report or for testifying, except for liability for perjury, unless such person acted negligently,
52 recklessly, in bad faith, or with malicious purpose.

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

56 11. No person who directs or exercises any authority as a vendor, and no personal
57 care attendant, shall harass, dismiss or retaliate against a consumer because he or she or any
58 member of his or her family has made a report of any violation or suspected violation of laws,
59 standards or regulations applying to the vendor or personal care attendant which he or she has
60 reasonable cause to believe has been committed or has occurred.

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

65 13. The department shall provide the list maintained pursuant to section 192.2490 to
66 vendors as defined in section 208.900.

67 14. Any person, corporation or association who received the employee
68 disqualification list under subsection 13 of this section, or any person responsible for
69 providing health care service, who declines to employ or terminates a person whose name is
70 listed in this section shall be immune from suit by that person or anyone else acting for or in
71 behalf of that person for the failure to employ or for the termination of the person whose
72 name is listed on the employee disqualification list.

✓