

SECOND REGULAR SESSION

# HOUSE BILL NO. 3412

103RD GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE WHALEY.

7376H.011

JOSEPH ENGLER, Chief Clerk

---

## AN ACT

To repeal sections 198.036, 198.528, 198.532, and 565.184, RSMo, and to enact in lieu thereof five new sections relating to the abuse or neglect of certain persons, with penalty provisions.

---

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

Section A. Sections 198.036, 198.528, 198.532, and 565.184, RSMo, are repealed  
2 and five new sections enacted in lieu thereof, to be known as sections 198.019, 198.036,  
3 198.528, 198.532, and 565.184, to read as follows:

**198.019. 1. As used in this section, the term "long-term care facility" means any  
2 facility licensed under this chapter.**

**3 2. Except as otherwise provided in subsection 3 of this section, each long-term  
4 care facility shall maintain liability insurance coverage in a minimum amount of one  
5 million dollars to insure against losses resulting from the negligent or criminal acts of  
6 the facility that constitute abuse, neglect, or wrongful death of any resident.**

**7 3. A long-term care facility shall be exempt from the requirement to maintain  
8 liability insurance coverage under subsection 2 of this section if the long-term care  
9 facility maintains a reserve account, segregated from its operational funds, of at least  
10 one million dollars to cover losses resulting from the negligent or criminal acts of the  
11 facility that constitute abuse, neglect, or wrongful death of any resident.**

198.036. 1. The department may revoke a license in any case in which it finds that:  
2 (1) The operator failed or refused to comply with class I or II standards, as established  
3 by the department pursuant to section 198.085; or failed or refused to comply with class III  
4 standards as established by the department pursuant to section 198.085, where the aggregate

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.

5 effect of such noncompliances presents either an imminent danger to the health, safety or  
6 welfare of any resident or a substantial probability that death or serious physical harm would  
7 result;

8 (2) The operator refused to allow representatives of the department to inspect the  
9 facility for compliance with standards or denied representatives of the department access to  
10 residents and employees necessary to carry out the duties set forth in this chapter and rules  
11 promulgated thereunder, except where employees of the facility are in the process of  
12 rendering immediate care to a resident of such facility;

13 (3) The operator knowingly acted or knowingly omitted any duty in a manner which  
14 would materially and adversely affect the health, safety, welfare or property of a resident;

15 (4) The operator demonstrated financial incapacity to operate and conduct the facility  
16 in accordance with the provisions of sections 198.003 to 198.096;

17 (5) The operator or any principals in the operation of the facility have ever been  
18 convicted of, or pled guilty or nolo contendere to a felony offense concerning the operation of  
19 a long-term health care facility or other health care facility, or ever knowingly acted or  
20 knowingly failed to perform any duty which materially and adversely affected the health,  
21 safety, welfare, or property of a resident while acting in a management capacity. The operator  
22 of the facility or any principal in the operation of the facility shall not be under exclusion  
23 from participation in the Title XVIII (Medicare) or Title XIX (Medicaid) program of any state  
24 or territory; ~~[or]~~

25 (6) The operator or any principals involved in the operation of the facility have ever  
26 been convicted of or pled guilty or nolo contendere to a felony in any state or federal court  
27 arising out of conduct involving either management of a long-term care facility or the  
28 provision or receipt of health care; **or**

29 **(7) The operator failed to maintain liability insurance coverage or a reserve**  
30 **account as required under section 198.019.**

31 2. Nothing in subdivision (2) of subsection 1 of this section shall be construed as  
32 allowing the department access to information not necessary to carry out the duties set forth in  
33 sections 198.006 to 198.186.

34 3. Upon revocation of a license, the director of the department shall so notify the  
35 operator in writing, setting forth the reason and grounds for the revocation. Notice of such  
36 revocation shall be sent by a delivery service that provides a dated receipt of delivery to the  
37 operator and administrator, or served personally upon the operator and administrator. The  
38 department shall provide the operator notice of such revocation at least ten days prior to its  
39 effective date.

198.528. 1. The department of health and senior services shall provide through its  
2 internet website:

3 (1) The most recent survey of every long-term care facility licensed in this state and  
4 any such findings of deficiencies and the effect the deficiency would have on such facility. If  
5 such survey is in dispute, the survey shall not be posted on the website until the facility's  
6 informal dispute resolution process resolves the dispute and the department shall, upon  
7 request of the facility, post the facility's response;

8 (2) The facility's proposed plan of correction;

9 (3) A link to the federal website that provides a summary of facility surveys  
10 conducted over the last three years; and

11 (4) Information on how to obtain a copy of a complete facility survey conducted over  
12 the last three years.

13 2. **(1) The department shall display an abuse and neglect icon in the form of a**  
14 **visible, standardized graphic symbol next to the informational listing on its website of**  
15 **any facility that has a substantiated finding of abuse or neglect from:**

16 (a) **The federal Centers for Medicare and Medicaid Services (CMS) Care**  
17 **Compare website or successor website;**

18 (b) **A federal or state inspection or complaint investigation conducted by the**  
19 **department or CMS; or**

20 (c) **An investigation by a law enforcement agency or another authorized**  
21 **investigative body.**

22 (2) **The abuse and neglect icon shall be tied to the facility's physical address and**  
23 **state license number and shall remain in place regardless of any change in the facility's**  
24 **name, ownership, management company, or corporate structure.**

25 (3) **The abuse and neglect icon shall be displayed in close proximity to the**  
26 **facility's name on the facility's profile page or informational listing and in any search**  
27 **results on the department's website where the facility appears. A plain-language**  
28 **summary of the abuse or neglect incident or incidents, including the date or dates of**  
29 **occurrence, the nature of the abuse or neglect, and the source of the finding, shall**  
30 **accompany the icon, either on the profile page or informational listing or through an**  
31 **easily accessible link.**

32 (4) **The abuse and neglect icon shall remain displayed for thirty-six months from**  
33 **the date of the most recent substantiated finding unless the finding is overturned on**  
34 **appeal.**

35 3. Nothing in this section shall be construed as requiring the department to post any  
36 information on its internet website that is prohibited from disclosure pursuant to the federal  
37 Health Insurance Portability and Accountability Act, as amended.

198.532. 1. Complaints filed with the department of health and senior services  
2 against a long-term care facility which allege that harm has occurred or is likely to occur to a

3 resident or residents of the facility due to actions or the lack of actions taken by the facility  
4 shall be investigated within thirty days of receipt of such complaints. The purpose of such  
5 investigation shall be to ensure the safety, protection and care of all residents of the facility  
6 likely to be affected by the alleged action or inaction. Such investigation shall be in addition  
7 to the investigation requirements for abuse and neglect reports pursuant to section 198.070.

8         2. The department shall provide the results of all investigations in accordance with  
9 section 192.2500. The department shall provide the results of such investigation in writing to  
10 all parties to the complaint, and if requested, to any of the facility's residents, or their family  
11 members or guardians. Complaints and written results will be readily available for public  
12 access and review at the department of health and senior services and at the long-term care  
13 facility. Personal information identifying the resident will be blanked out, except in regard to  
14 immediate family, the attorney-in-fact or the legal guardian of the resident in question. This  
15 information will remain readily available for a period of time determined by the department  
16 of health and senior services.

17         **3. The department shall provide the results of any substantiated report of a**  
18 **facility resident's abuse or neglect to the general assembly and the lieutenant governor**  
19 **in a manner that is consistent with the provisions of this section.**

20         565.184. 1. A person commits the offense of abuse of an elderly person, a person  
1 with a disability, or a vulnerable person if he or she:

2         (1) Purposely engages in conduct involving more than one incident that causes  
3 emotional distress to an elderly person, a person with a disability, or a vulnerable person. The  
4 course of conduct shall be such as would cause a reasonable elderly person, person with a  
5 disability, or vulnerable person to suffer substantial emotional distress; or

6         (2) Intentionally fails to provide care, goods or services to an elderly person, a person  
7 with a disability, or a vulnerable person. The result of the conduct shall be such as would  
8 cause a reasonable elderly person, person with a disability, or vulnerable person to suffer  
9 physical or emotional distress; or

10         (3) Knowingly acts or knowingly fails to act in a manner which results in a  
11 substantial risk to the life, body or health of an elderly person, a person with a disability, or a  
12 vulnerable person.

13         2. The offense of abuse of an elderly person, a person with a disability, or a  
14 vulnerable person is a class A misdemeanor; **however, if a person commits the offense of**  
15 **abuse of an elderly person, a person with a disability, or a vulnerable person under**  
16 **subdivision (3) of subsection 1 of this section and such person is a care provider subject**  
17 **to employee disqualification under the provisions of section 192.2490, the offense of**  
18 **abuse of an elderly person, a person with a disability, or a vulnerable person is a class E**  
19 **felony.** Nothing in this section shall be construed to mean that an elderly person, a person

21 with a disability, or a vulnerable person is abused solely because such person chooses to rely  
22 on spiritual means through prayer, in lieu of medical care, for his or her health care, as  
23 evidence by such person's explicit consent, advance directive for health care, or practice.

✓