

FIRST REGULAR SESSION

SENATE BILL NO. 490

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time February 12, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2051S.011

AN ACT

To repeal sections 192.925, 197.500, 198.006, 198.070, 198.090, 198.532, 208.909, 208.912, 208.915, 210.900, 210.906, 210.933, 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 570.145, 660.010, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.070, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, and to enact in lieu thereof sixty-three new sections relating to citizens most at risk for exploitation, with penalty provisions.

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

Section A. Sections 192.925, 197.500, 198.006, 198.070, 198.090, 198.532, 208.909, 208.912, 208.915, 210.900, 210.906, 210.933, 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 570.145, 660.010, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.070, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, are repealed and sixty-three new sections enacted in lieu thereof, to be known as sections 192.925, 192.2000, 192.2001, 192.2003, 192.2006, 192.2009, 192.2012, 192.2015, 192.2025, 192.2030, 192.2033, 192.2035, 192.2040, 192.2100, 192.2103, 192.2106, 192.2109, 192.2112, 192.2115, 192.2118, 192.2121, 192.2124,

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

13 192.2127, 192.2130, 192.2150, 192.2153, 192.2175, 192.2178, 192.2181, 192.2184,
14 192.2187, 192.2200, 192.2203, 192.2206, 192.2209, 192.2212, 192.2215, 192.2218,
15 192.2221, 192.2224, 192.2227, 192.2250, 192.2253, 198.006, 198.090, 198.532,
16 198.700, 198.703, 198.705, 198.708, 208.909, 208.912, 210.900, 210.906, 559.100,
17 565.180, 565.182, 565.184, 565.188, 565.200, 565.320, 570.145, and 660.010, to
18 read as follows:

192.925. 1. To increase public awareness of the problem of elder abuse
2 and neglect **and financial exploitation of the elderly**, the department of
3 health and senior services shall implement an education and awareness
4 program. Such program shall have the goal of reducing the incidences of elder
5 abuse and neglect **and financial exploitation of the elderly**, and may focus
6 on:

7 (1) The education and awareness of mandatory reporters on their
8 responsibility to report elder abuse and neglect **and financial exploitation of**
9 **the elderly**;

10 (2) Targeted education and awareness for the public on the problem,
11 identification and reporting of elder abuse and neglect **and financial**
12 **exploitation of the elderly**;

13 (3) Publicizing the elder abuse and neglect hot line telephone number;

14 (4) Education and awareness for law enforcement agencies and
15 prosecutors on the problem and identification of elder abuse and neglect **and**
16 **financial exploitation of the elderly**, and the importance of prosecuting cases
17 pursuant to chapter 565, RSMo; and

18 (5) Publicizing the availability of background checks prior to hiring an
19 individual for caregiving purposes.

20 2. The department of social services and facilities licensed pursuant to
21 chapters 197 and 198, RSMo, shall cooperate fully with the department of health
22 and senior services in the distribution of information pursuant to this program.

[660.050.] **192.2000.** 1. The "Division of Aging" is hereby transferred
2 from the department of social services to the department of health and senior
3 services by a type I transfer as defined in the Omnibus State Reorganization Act
4 of 1974. **All references in the revised statutes of Missouri to the division**
5 **of aging shall include any division or divisions established by the**
6 **department as a successor division or divisions to the division of**
7 **aging.** The division shall aid and assist the elderly and low-income handicapped
8 adults living in the state of Missouri to secure and maintain maximum economic

9 and personal independence and dignity. The division shall regulate adult
10 long-term care facilities pursuant to the laws of this state and rules and
11 regulations of federal and state agencies, to safeguard the lives and rights of
12 residents in these facilities.

13 2. In addition to its duties and responsibilities enumerated pursuant to
14 other provisions of law, the division shall:

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

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

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

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

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

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

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

35 (8) Conduct a survey and review of compliance with P.L. 96-566 Sec.
36 505(d) for Supplemental Security Income recipients in long-term care facilities
37 and serve as the liaison between the Social Security Administration and the
38 department of health and senior services concerning Supplemental Security
39 Income beneficiaries;

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

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

45 (11) Serve as the central state agency with primary responsibility for the
46 planning, coordination, development, and evaluation of policy, programs, and
47 services for elderly persons in Missouri consistent with the provisions of
48 subsection 1 of this section and serve as the designated state unit on aging, as
49 defined in the Older Americans Act of 1965;

50 (12) With the advice of the governor's advisory council on aging, develop
51 long-range state plans for programs, services, and activities for elderly and
52 handicapped persons. State plans should be revised annually and should be
53 based on area agency on aging plans, statewide priorities, and state and federal
54 requirements;

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

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

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

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

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

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

81 care;

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

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

86 (21) Provide transportation services, home-delivered and congregate
87 meals, in-home services, counseling and other services to the elderly and
88 low-income handicapped adults as designated in the Social Services Block Grant
89 Report, through contract with other agencies, and shall monitor such agencies to
90 ensure that services contracted for are delivered and meet standards of quality
91 set by the division;

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

96 3. The division director, subject to the supervision of the director of the
97 department of health and senior services, shall be the chief administrative officer
98 of the division and shall exercise for the division the powers and duties of an
99 appointing authority pursuant to chapter 36, RSMo, to employ such
100 administrative, technical and other personnel as may be necessary for the
101 performance of the duties and responsibilities of the division.

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

113 5. Any person hired by the department of health and senior services after
114 August 13, 1988, to conduct or supervise inspections, surveys or investigations
115 pursuant to chapter 198, RSMo, shall complete at least one hundred hours of
116 basic orientation regarding the inspection process and applicable rules and

117 statutes during the first six months of employment. Any such person shall
118 annually, on the anniversary date of employment, present to the department
119 evidence of having completed at least twenty hours of continuing education in at
120 least two of the following categories: communication techniques, skills
121 development, resident care, or policy update.

122 The department of health and senior services shall by rule describe the
123 curriculum and structure of such continuing education.

124 6. The division may issue and promulgate rules to enforce, implement and
125 effectuate the powers and duties established in this section [and sections 198.070
126 and 198.090, RSMo, and sections 660.250 and 660.300 to 660.320], **section**
127 **192.2100 and sections 192.2175 to 192.2187, and section 198.090,**
128 **RSMo.** Any rule or portion of a rule, as that term is defined in section 536.010,
129 RSMo, that is created under the authority delegated in this section shall become
130 effective only if it complies with and is subject to all of the provisions of chapter
131 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
132 536, RSMo, are nonseverable and if any of the powers vested with the general
133 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
134 or to disapprove and annul a rule are subsequently held unconstitutional, then
135 the grant of rulemaking authority and any rule proposed or adopted after August
136 28, 2001, shall be invalid and void.

137 7. Missouri care options is a program, operated and coordinated by the
138 **[division of aging] department**, which informs individuals of the variety of care
139 options available to them when they may need long-term care.

140 8. The division shall, by January 1, 2002, establish minimum
141 dementia-specific training requirements for employees involved in the delivery of
142 care to persons with Alzheimer's disease or related dementias who are employed
143 by skilled nursing facilities, intermediate care facilities, residential care facilities,
144 agencies providing in-home care services authorized by the **[division of aging]**
145 **department**, adult day-care programs, independent contractors providing direct
146 care to persons with Alzheimer's disease or related dementias and the **[division**
147 **of aging] department.** Such training shall be incorporated into new employee
148 orientation and ongoing in-service curricula for all employees involved in the care
149 of persons with dementia. The department of health and senior services shall,
150 by January 1, 2002, establish minimum dementia-specific training requirements
151 for employees involved in the delivery of care to persons with Alzheimer's disease
152 or related dementias who are employed by home health and hospice agencies

153 licensed by chapter 197, RSMo. Such training shall be incorporated into the
154 home health and hospice agency's new employee orientation and ongoing
155 in-service curricula for all employees involved in the care of persons with
156 dementia. The dementia training need not require additional hours of orientation
157 or ongoing in-service. Training shall include at a minimum, the following:

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

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

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

171 **9. All the powers, duties, and functions of the board of nursing**
172 **home administrators, chapter 344, RSMo, are transferred by type I**
173 **transfer to the department of health and senior services. The public**
174 **members of the board shall be appointed by the director of the**
175 **department of health and senior services.**

[660.060.] **192.2001.** All authority, powers, duties, functions, records,
2 personnel, property, contracts, budgets, matters pending and other pertinent
3 vestiges of the division of aging shall be transferred to the department of health
4 and senior services.

[660.053.] **192.2003.** As used in [section 199.025, RSMo, and sections
2 660.050 to 660.057 and 660.400 to 660.420] **sections 192.2000 to 192.2012 and**
3 **sections 192.2200 to 192.2227,** the following terms mean:

4 (1) "Area agency on aging", the agency designated by the division in a
5 planning and service area to develop and administer a plan and administer
6 available funds for a comprehensive and coordinated system of services for the
7 elderly and persons with disabilities who require similar services;

8 (2) "Area agency board", the local policy-making board which directs the
9 actions of the area agency on aging under state and federal laws and regulations;

10 (3) "Director", the director of the division of aging of the Missouri
11 department of [social] **health and senior** services;

12 (4) "Division", the division of aging of the Missouri department of [social]
13 **health and senior** services;

14 (5) "Elderly" or "elderly persons", persons who are sixty years of age or
15 older;

16 (6) "Disability", a mental or physical impairment that substantially limits
17 one or more major life activities, whether the impairment is congenital or
18 acquired by accident, injury or disease, where such impairment is verified by
19 medical findings;

20 (7) "Local government", a political subdivision of the state whose authority
21 is general or a combination of units of general purpose local governments;

22 (8) "Major life activities", functions such as caring for one's self,
23 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning,
24 and working;

25 (9) "Medicaid", medical assistance provided under section 208.151, RSMo,
26 et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the
27 Social Security Act (42 U.S.C. 301 et seq.), as amended;

28 (10) "Protective services", a service provided by the [Missouri division of
29 aging] **division** in response to the need for protection from harm or neglect to
30 eligible adults under sections [660.250 to 660.295] **192.2100 to 192.2130**;

31 (11) "Registered caregiver", a person who provides primary long-term care
32 for an elderly person and wishes to receive information, services or support from
33 the shared care program;

34 (12) "Shared care", a program administered by the [division of aging]
35 **department** in which Missouri families who provide primary long-term care for
36 an elderly person and register as a shared care member with the [division of
37 aging] **department** shall receive access to certain supportive services and may
38 receive a state tax credit;

39 (13) "Shared care community project", a project in a community that offers
40 to help support shared care participation through development of programs;

41 (14) "Shared care member", a registered caregiver or shared care provider
42 who registers with the [division of aging] **department** in order to participate in
43 the shared care program;

44 (15) "Shared care provider", any state authorized long-term care provider
45 in the state, including, but not limited to, in-home, home health, hospice, adult

46 day care, residential care facility or assisted living facility, or nursing home, who
47 voluntarily registers with the [division of aging] **department** to be available as
48 a resource for the shared care program;

49 (16) "Shared care tax credit", a tax credit to registered caregivers who
50 meet the requirements of section [660.055] **192.2009**.

[660.054.] **192.2006**. 1. The [division of aging of the] department of
2 [social] **health and senior** services shall establish a program to help families
3 who provide the primary long-term care for an elderly person. This program shall
4 be known as "shared care" and has the following goals:

5 (1) To provide services and support for families caring for an elderly
6 person;

7 (2) To increase awareness of the variety of privately funded services which
8 may be available to those persons caring for an elderly person;

9 (3) To increase awareness of the variety of government services which may
10 be available to those caring for an elderly person;

11 (4) Recognition on an annual basis by the governor for those families
12 participating in the shared care program and community project groups
13 participating in the shared care program;

14 (5) To provide a tax credit to members who meet the qualifications
15 pursuant to section [660.055] **192.2009**; and

16 (6) To promote community involvement by:

17 (a) Providing local communities information about the shared care
18 program and to encourage the establishment of support groups where none are
19 available and to support existing support groups, and other programs for shared
20 care members and providers to share ideas, information and resources on caring
21 for an elderly person; and

22 (b) Encouraging local home care, adult day care or other long-term care
23 providers, who have regularly scheduled training sessions for paid caregivers, to
24 voluntarily invite shared care members to participate in education and training
25 sessions at no cost to the registered caregivers. Such providers shall not be held
26 liable in any civil or criminal action related to or arising out of the participation
27 or training of shared care members in such sessions.

28 2. To further the goals of the shared care program, the director shall:

29 (1) Promulgate specific rules and procedures for the shared care
30 program. Any rule or portion of a rule, as that term is defined in section 536.010,
31 RSMo, that is created under the authority delegated in sections [660.050 to

32 660.057] **192.2000 to 192.2012** shall become effective only if it complies with and
33 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
34 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is
35 of no force and effect and repealed. Nothing in this section shall be interpreted
36 to repeal or affect the validity of any rule filed or adopted prior to August 28,
37 1999, if it fully complied with all applicable provisions of law. This section and
38 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
39 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
40 date or to disapprove and annul a rule are subsequently held unconstitutional,
41 then the grant of rulemaking authority and any rule proposed or adopted after
42 August 28, 1999, shall be invalid and void;

43 (2) Maintain a registry of names and addresses of shared care members
44 and shared care providers;

45 (3) Compile a list, updated annually, of public and private resources,
46 services and programs which may be available to assist and support the
47 registered caregiver with caring for the elderly. Such list shall be given to shared
48 care members along with information on shared care providers in their
49 community. Private organizations and providers shall be responsible for
50 providing information to the [division of aging] **department** for inclusion on the
51 list. The [division of aging] **department** shall establish reporting procedures for
52 private organizations and publicly disseminate the [division's] **department's**
53 guidelines statewide;

54 (4) Compile and distribute to shared care members information about the
55 services and benefits of the shared care program and a bibliography of resources
56 and materials with information helpful to such members. The bibliography will
57 give members an overview of available information and is not required to be
58 comprehensive;

59 (5) Encourage shared care providers, consumer groups, churches and other
60 philanthropic organizations to help local communities develop local support
61 systems where none are available and to support existing support groups for
62 persons caring for elderly persons and make [division] **department** staff
63 available, if possible;

64 (6) In conjunction with the director of revenue, develop a physician
65 certification for shared care tax credit form to be given to registered caregivers
66 upon request. The form shall require, but is not limited to:

67 (a) Identifying information about the registered caregiver for tax

68 purposes, and the signature of the registered caregiver certifying that he or she
69 qualifies for the shared care tax credit as provided in section [660.055] **192.2009**;

70 (b) Identifying information about the elderly person receiving care for
71 verification purposes;

72 (c) Identifying information about and the signature of the physician
73 licensed pursuant to the provisions of chapter 334, RSMo, for verification and
74 certification purposes;

75 (d) A description by such physician of the physical or mental condition of
76 the elderly person that makes them incapable of living alone and lists the care,
77 assistance with daily living and oversight needed at home in order to prevent
78 placement in a facility licensed pursuant to chapter 198, RSMo; and

79 (e) A complete explanation of the shared care tax credit and its guidelines
80 and directions on completion of the form and how to file for the shared care tax
81 credit with the department of revenue; and

82 (7) In conjunction with the director of revenue, develop a [division of
83 aging] **department** certification for shared care tax credit form to be given at the
84 request of the registered caregivers when a [division of aging] **department**
85 assessment has been completed for other purposes. The form shall require, but
86 is not limited to:

87 (a) Identifying information about the registered caregiver for tax
88 purposes, and the signature of the registered caregiver certifying that he or she
89 qualifies for the shared care tax credit as provided in section [660.055] **192.2009**;

90 (b) Identifying information about the elderly person receiving care for
91 verification purposes;

92 (c) Identifying information about and the signature of the [division of
93 aging] **department** staff for verification and certification purposes;

94 (d) A description by the [division of aging] **department** staff of the
95 physical or mental condition of the elderly person that makes them incapable of
96 living alone and lists the care, assistance with daily living and oversight needed
97 at home in order to prevent placement in a facility licensed pursuant to chapter
98 198, RSMo; and

99 (e) A complete explanation of the shared care tax credit and its guidelines
100 and directions for completing the form and how to file for the shared care tax
101 credit with the department of revenue.

102 3. Funds appropriated for the shared care program shall be appropriated
103 to and administered by the department of [social] **health and senior** services.

[660.055.] **192.2009.** 1. Any registered caregiver who meets the requirements of this section shall be eligible for a shared care tax credit in an amount not to exceed five hundred dollars to defray the cost of caring for an elderly person. In order to be eligible for a shared care tax credit, a registered caregiver shall:

(1) Care for an elderly person, age sixty or older, who:

(a) Is physically or mentally incapable of living alone, as determined and certified by his or her physician licensed pursuant to chapter 334, RSMo, or by the [division of aging] **department** staff when an assessment has been completed for the purpose of qualification for other services; and

(b) Requires assistance with activities of daily living to the extent that without care and oversight at home would require placement in a facility licensed pursuant to chapter 198, RSMo; and

(c) Under no circumstances, is able or allowed to operate a motor vehicle; and

(d) Does not receive funding or services through Medicaid or social services block grant funding;

(2) Live in the same residence to give protective oversight for the elderly person meeting the requirements described in subdivision (1) of this subsection for an aggregate of more than six months per tax year;

(3) Not receive monetary compensation for providing care for the elderly person meeting the requirements described in subdivision (1) of this subsection; and

(4) File the original completed and signed physician certification for shared care tax credit form or the original completed and signed [division of aging] **department** certification for shared care tax credit form provided for in subsection 2 of section [660.054] **192.2006** along with such caregiver's Missouri individual income tax return to the department of revenue.

2. The tax credit allowed by this section shall apply to any year beginning after December 31, 1999.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections [660.050 to 660.057] **192.2000 to 192.2012** shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted

37 to repeal or affect the validity of any rule filed or adopted prior to August 28,
38 1999, if it fully complied with all applicable provisions of law. This section and
39 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
40 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
41 date or to disapprove and annul a rule are subsequently held unconstitutional,
42 then the grant of rulemaking authority and any rule proposed or adopted after
43 August 28, 1999, shall be invalid and void.

44 4. Any person who knowingly falsifies any document required for the
45 shared care tax credit shall be subject to the same penalties for falsifying other
46 tax documents as provided in chapter 143, RSMo.

[660.057.] **192.2012.** 1. On and after August 13, 1984, an area agency
2 on aging shall operate with local administrative responsibility for Title III of the
3 Older Americans Act, and other funds allocated to it by the [division]
4 **department**. The area agency board shall be responsible for all actions of an
5 area agency on aging in its jurisdiction, including, but not limited to, the
6 accountability for funds and compliance with federal and state laws and
7 rules. Such responsibility shall include all geographic areas in which the area
8 agency on aging is designated to operate. The respective area agency board shall
9 appoint a director of the area agency on aging in its jurisdiction. [Beginning
10 January 1, 1995,] The director of the area agency on aging shall submit an
11 annual performance report to the [division] **department** director, the speaker
12 of the house of representatives, the president pro tempore of the senate and the
13 governor. Such performance report shall give a detailed accounting of all funds
14 which were available to and expended by the area agency on aging from state,
15 federal and private sources.

16 2. Each area agency on aging shall have an area agency on aging advisory
17 council, which shall:

18 (1) Recommend basic policy guidelines for the administration of the
19 activities of the area agencies on aging on behalf of elderly persons and advise the
20 area agency on aging on questions of policy;

21 (2) Advise the area agency on aging with respect to the development of the
22 area plan and budget, and review and comment on the completed area plan and
23 budget before its transmittal to the [division] **department**;

24 (3) Review and evaluate the effectiveness of the area agency on aging in
25 meeting the needs of elderly persons in the planning and service area;

26 (4) Meet at least quarterly, with all meetings being subject to sections

27 610.010 to 610.030, RSMo.

28 3. Each area agency board shall:

29 (1) Conduct local planning functions for Title III and Title XX, and such
30 other funds as may be available;

31 (2) Develop a local plan for service delivery, subject to review and
32 approval by the [division] **department**, that complies with federal and state
33 requirements and in accord with locally determined objectives consistent with the
34 state policy on aging;

35 (3) Assess the needs of elderly persons within the planning and service
36 delivery area for social and health services, and determine what
37 resources are currently available to meet those needs;

38 (4) Assume the responsibility of determining services required to meet the
39 needs of elderly persons, assure that such services are provided within the
40 resources available, and determine when such services are no longer needed;

41 (5) Endeavor to coordinate and expand existing resources in order to
42 develop within its planning and service area a comprehensive and coordinated
43 system for the delivery of social and health services to elderly persons;

44 (6) Serve as an advocate within government and within the community at
45 large for the interests of elderly persons within its planning and service area;

46 (7) Make grants to or enter into contracts with any public or private
47 agency for the provision of social or health services not otherwise sufficiently
48 available to elderly persons within the planning and service area;

49 (8) Monitor and evaluate the activities of its service providers to ensure
50 that the services being provided comply with the terms of the grant or
51 contract. Where a provider is found to be in breach of the terms of its grant or
52 contract, the area agency shall enforce the terms of the grant or contract;

53 (9) Conduct research, evaluation, demonstration or training activities
54 appropriate to the achievement of the goal of improving the quality of life for
55 elderly persons within its planning and service area;

56 (10) Comply with [division] **department** requirements that have been
57 developed in consultation with the area agencies for client and fiscal information,
58 and provide to the [division] **department** information necessary for federal and
59 state reporting, program evaluation, program management, fiscal control and
60 research needs.

61 4. [Beginning January 1, 1995,] The records of each area agency on aging
62 shall be audited at least every other year. All audits required by the Older

63 Americans Act of 1965, as amended, shall satisfy this requirement.

[660.058.] **192.2015.** 1. The [division of aging] **department** shall
2 provide budget allotment tables to each area agency on aging by January first of
3 each year. Each area agency on aging shall submit its area plan, area budget and
4 service contracts to the [division of aging] **department** by March first of each
5 year. Each April, the area agencies on aging shall present their plans to the
6 [division of aging] **department** in a public hearing scheduled by the [division]
7 **department** and held in the area served by the area agency on aging. Within
8 thirty days of such hearing, the [division] **department** shall report findings and
9 recommendations to the board of directors for the area agency on aging, the area
10 agency on aging advisory council, the members of the senate budget committee
11 and the members of the house appropriations committee for social services and
12 corrections.

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

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

[660.062.] **192.2025.** 1. There is hereby created a "State Board of Senior
2 Services" which shall consist of seven members, who shall be appointed by the
3 governor, by and with the advice and consent of the senate. No member of the
4 state board of senior services shall hold any other office or employment under the
5 state of Missouri other than in a consulting status relevant to the member's
6 professional status, licensure or designation. Not more than four of the members
7 of the state board of senior services shall be from the same political party.

8 2. Each member shall be appointed for a term of four years; except that
9 of the members first appointed, two shall be appointed for a term of one year, two
10 for a term of two years, two for a term of three years and one for a term of four
11 years. The successors of each shall be appointed for full terms of four years. No
12 person may serve on the state board of senior services for more than two
13 terms. The terms of all members shall continue until their successors have been
14 duly appointed and qualified. One of the persons appointed to the state board of

15 senior services shall be a person currently working in the field of
16 gerontology. One of the persons appointed to the state board of senior services
17 shall be a physician with expertise in geriatrics. One of the persons appointed
18 to the state board of senior services shall be a person with expertise in
19 nutrition. One of the persons appointed to the state board of senior services shall
20 be a person with expertise in rehabilitation services of persons with
21 disabilities. One of the persons appointed to the state board of senior services
22 shall be a person with expertise in mental health issues. In making the two
23 remaining appointments, the governor shall give consideration to individuals
24 having a special interest in gerontology or disability-related issues, including
25 senior citizens. Four of the seven members appointed to the state board of senior
26 services shall be members of the governor's advisory council on aging. If a
27 vacancy occurs in the appointed membership, the governor may appoint a member
28 for the remaining portion of the unexpired term created by the vacancy. The
29 members shall receive actual and necessary expenses plus twenty-five dollars per
30 day for each day of actual attendance.

31 3. The board shall elect from among its membership a chairman and a
32 vice chairman, who shall act as chairman in his or her absence. The board shall
33 meet at the call of the chairman. The chairman may call meetings at such times
34 as he or she deems advisable, and shall call a meeting when requested to do so
35 by three or more members of the board.

36 4. The state board of senior services shall advise the department of health
37 and senior services in the:

38 (1) Promulgation of rules and regulations by the department of health and
39 senior services;

40 (2) Formulation of the budget for the department of health and senior
41 services; and

42 (3) Planning for and operation of the department of health and senior
43 services.

[660.067.] 192.2030. As used in sections **[660.067 to 660.070] 192.2030**
2 **to 192.2035**, the following terms shall mean:

3 (1) "Adult day care", a group program that emphasizes appropriate
4 services for persons eighteen years of age or older having Alzheimer's disease and
5 related disorders and that provides services for periods of less than twenty-four
6 hours but more than two hours per day in a place other than the adult's home;

7 (2) "Alzheimer's disease and related disorders", diseases resulting from

8 significant destruction of brain tissue and characterized by a decline of memory
9 and other intellectual functions. These diseases include but are not limited to
10 progressive, degenerative and dementing illnesses such as presenile and senile
11 dementias, Alzheimer's disease and other related disorders;

12 (3) "Appropriate services", services that emphasize surveillance, safety,
13 behavior management and other techniques used to assist persons having
14 Alzheimer's disease and related disorders;

15 (4) "Director", the director of the division of aging of the department of
16 [social] **health and senior** services;

17 (5) "Division", the division of aging of the department of [social] **health**
18 **and senior** services;

19 (6) "In-home companion", someone trained to provide appropriate services
20 to persons having Alzheimer's disease and related disorders and who provides
21 those services in the home;

22 (7) "Respite care", a program that provides temporary and short-term
23 residential care, sustenance, supervision and other appropriate services for
24 persons having Alzheimer's disease and related disorders who otherwise reside
25 in their own or in a family home.

[660.069.] **192.2033.** 1. To encourage development of appropriate
2 services for persons having Alzheimer's disease and related disorders, the
3 [division] **department** may make grants to public and private entities for pilot
4 projects from funds specifically appropriated for this purpose. Pilot projects shall
5 have the following goals:

6 (1) To prevent or postpone institutionalization of persons having
7 Alzheimer's disease and related disorders who currently live in their own home
8 or in a family home;

9 (2) To offer services that emphasize safety, surveillance and behavior
10 management rather than, or in addition to, medical treatment, homemaker, chore
11 or personal care services;

12 (3) To temporarily relieve family members or others who have assumed
13 direct care responsibilities by offering services that allow care givers to leave the
14 home. These services shall include but not be limited to adult day care, in-home
15 companions and respite care;

16 (4) To test the practical and economic feasibility of providing services in
17 settings and at levels designed for varying needs; and

18 (5) To develop program models that can be adapted and operated by other

19 public and private entities.

20 2. The director, in accordance with chapter 536, RSMo, shall promulgate
21 rules that establish procedures for grant application, review, selection, monitoring
22 and auditing of grants made [pursuant to sections 660.067 to 660.070] **under**
23 **this section and section 192.2035.**

24 3. The grants shall be limited to a duration of one year but may be
25 renewable for one additional year at the director's discretion and if funds are
26 appropriated for this purpose.

 [660.070.] **192.2035.** The commissioner of administration, in consultation
2 with the director of the [division of aging] **department**, shall promulgate rules
3 that establish procedures for contracting with grantees receiving funds under
4 [sections 660.067 to 660.070] **under this section and section 192.2033.** No
5 rule or portion of a rule promulgated under the authority of sections 660.067 to
6 660.070 shall become effective unless it has been promulgated pursuant to the
7 provisions of section 536.024, RSMo.

 [660.099.] **192.2040.** 1. The general assembly may appropriate funds in
2 addition to the amount currently being provided per annum for nutrition services
3 for the elderly. Funds so designated to provide nutrition services for the elderly
4 shall be allocated to the [Missouri division of aging] **department** to be placed on
5 the formula basis and distributed to each area agency on aging throughout the
6 state of Missouri.

7 2. The general assembly may appropriate funds in addition to the amount
8 currently being provided per annum through the Missouri elderly and
9 handicapped transportation program. Funds so designated to provide
10 transportation for the elderly and developmentally disabled shall be allocated to
11 the [Missouri division of aging] **department** to be placed on the formula basis
12 and distributed to each area agency on aging throughout the state of Missouri.

13 3. The general assembly may appropriate funds in addition to the amount
14 currently being provided per annum for home-delivered meals for the
15 elderly. Such additional funds shall be allocated to the [Missouri division of
16 aging] **department** to be placed on the formula basis and distributed to each
17 area agency on aging throughout the state of Missouri.

 [660.250.] **192.2100.** As used in sections [660.250 to 660.321] **192.2100**
2 **to 192.2130 and sections 192.2175 to 192.2187,** the following terms mean:

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

- 5 (2) "Court", the circuit court;
- 6 (3) "Department", the department of health and senior services;
- 7 (4) "Director", director of the department of health and senior services or
8 his or her designees;
- 9 (5) "Eligible adult", a person sixty years of age or older who is unable to
10 protect his or her own interests or adequately perform or obtain services which
11 are necessary to meet his or her essential human needs or an adult with a
12 disability, as defined in section [660.053] **192.2003**, between the ages of eighteen
13 and fifty-nine who is unable to protect his or her own interests or adequately
14 perform or obtain services which are necessary to meet his or her essential
15 human needs;
- 16 (6) "Home health agency", the same meaning as such term is defined in
17 section 197.400, RSMo;
- 18 (7) "Home health agency employee", a person employed by a home health
19 agency;
- 20 (8) "Home health patient", an eligible adult who is receiving services
21 through any home health agency;
- 22 (9) "In-home services client", an eligible adult who is receiving services in
23 his or her private residence through any in-home services provider agency;
- 24 (10) "In-home services employee", a person employed by an in-home
25 services provider agency;
- 26 (11) "In-home services provider agency", a business entity under contract
27 with the department or with a Medicaid participation agreement, which employs
28 persons to deliver any kind of services provided for eligible adults in their private
29 homes;
- 30 (12) "Least restrictive environment", a physical setting where protective
31 services for the eligible adult and accommodation is provided in a manner no
32 more restrictive of an individual's personal liberty and no more intrusive than
33 necessary to achieve care and treatment objectives;
- 34 (13) "Likelihood of serious physical harm", one or more of the following:
- 35 (a) A substantial risk that physical harm to an eligible adult will occur
36 because of his or her failure or inability to provide for his or her essential human
37 needs as evidenced by acts or behavior which has caused such harm or which
38 gives another person probable cause to believe that the eligible adult will sustain
39 such harm;
- 40 (b) A substantial risk that physical harm will be inflicted by an eligible

41 adult upon himself or herself, as evidenced by recent credible threats, acts, or
42 behavior which has caused such harm or which places another person in
43 reasonable fear that the eligible adult will sustain such harm;

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

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

52 (14) "Neglect", the failure to provide services to an eligible adult by any
53 person, firm or corporation with a legal or contractual duty to do so, when such
54 failure presents either an imminent danger to the health, safety, or welfare of the
55 client or a substantial probability that death or serious physical harm would
56 result;

57 (15) "Protective services", services provided by the state or other
58 governmental or private organizations or individuals which are necessary for the
59 eligible adult to meet his or her essential human needs.

[660.255.] **192.2103.** 1. Any person having reasonable cause to suspect
2 that an eligible adult presents a likelihood of suffering serious physical harm and
3 is in need of protective services shall report such information to the department.

4 2. The report shall be made orally or in writing. It shall include, if
5 known:

6 (1) The name, age, and address of the eligible adult;

7 (2) The name and address of any person responsible for the eligible adult's
8 care;

9 (3) The nature and extent of the eligible adult's condition; and

10 (4) Other relevant information.

11 3. Reports regarding persons determined not to be eligible adults as
12 defined in section 660.250 shall be referred to the appropriate state or local
13 authorities.

14 4. The department shall maintain a statewide toll free phone number for
15 receipt of reports.

[660.260.] **192.2106.** 1. Upon receipt of a report, the department shall
2 make a prompt and thorough investigation to determine whether or not an

3 eligible adult is facing a likelihood of serious physical harm and is in need of
4 protective services. The department shall provide for any of the following:

- 5 (1) Identification of the eligible adult and determination that the eligible
6 adult is eligible for services;
- 7 (2) Evaluation and diagnosis of the needs of eligible adults;
- 8 (3) Provision of social casework, counseling or referral to the appropriate
9 local or state authority;
- 10 (4) Assistance in locating and receiving alternative living arrangements
11 as necessary;
- 12 (5) Assistance in locating and receiving necessary protective services; or
- 13 (6) The coordination and cooperation with other state agencies and public
14 and private agencies in exchange of information and the avoidance of duplication
15 of services.

[660.261.] **2.** Upon receipt of a report that an eligible adult between the
2 ages of eighteen and fifty-nine is facing a likelihood of serious physical harm, the
3 department shall:

- 4 (1) Investigate or refer the report to appropriate law enforcement or state
5 agencies; and
- 6 (2) Provide services or refer to local community or state agencies.

[660.263.] **192.2109.** 1. Reports made pursuant to sections [660.250 to
2 660.295] **192.2100 to 192.2130** shall be confidential and shall not be deemed a
3 public record and shall not be subject to the provisions of section 109.180, RSMo,
4 or chapter 610, RSMo.

5 2. Such reports shall be accessible for examination and copying only to the
6 following persons or offices, or to their designees:

- 7 (1) The department or any person or agency designated by the
8 department;
- 9 (2) The attorney general;
- 10 (3) The department of mental health for persons referred to that
11 department;
- 12 (4) Any appropriate law enforcement agency; and
- 13 (5) The eligible adult or his **or her** legal guardian.

14 3. The name of the reporter shall not be disclosed unless:

- 15 (1) Such reporter specifically authorizes disclosure of his **or her** name;
16 and
- 17 (2) The department determines that disclosure of the name of the reporter

18 is necessary in order to prevent further harm to an eligible adult.

19 4. Any person who violates the provisions of this section, or who permits
20 or encourages the unauthorized dissemination of information contained in the
21 central registry and in reports and records made pursuant to sections [660.250
22 to 660.295] **192.2100 to 192.2130**, shall be guilty of a class A misdemeanor.

23 5. The department shall maintain a central registry capable of receiving
24 and maintaining reports received in a manner that facilitates rapid access and
25 recall of the information reported, and of subsequent investigations and other
26 relevant information. The department shall electronically record any telephone
27 report of suspected abuse and neglect received by the department and such
28 recorded reports shall be retained by the department for a period of one year after
29 recording.

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

 [660.265.] **192.2112.** When an eligible adult gives consent to receive
2 protective services, the department shall assist the adult in locating and
3 arranging for necessary services in the least restrictive environment reasonably
4 available.

 [660.270.] **192.2115.** When the department receives a report that there
2 has been abuse or neglect, or that there otherwise is a likelihood of serious
3 physical harm to an eligible adult and that he or she is in need of protective
4 services and the department is unable to conduct an investigation because access
5 to the eligible adult is barred by any person, the director may petition the
6 appropriate court for a warrant or other order to enter upon the described
7 premises and investigate the report or to produce the information. The
8 application for the warrant or order shall identify the eligible adult and the facts
9 and circumstances which require the issuance of the warrant or order. The
10 director may also seek an order to enjoin the person from barring access to an
11 eligible adult or from interfering with the investigation. If the court finds that,
12 based on the report and relevant circumstances and facts, probable cause exists
13 showing that the eligible adult faces abuse or neglect, or otherwise faces a
14 likelihood of serious physical harm and is in need of protective services and the
15 director has been prevented by another person from investigating the report, the
16 court may issue the warrant or enjoin the interference with the investigation or

17 both.

[660.275.] **192.2118.** If an eligible adult gives consent to receive
2 protective services and any other person interferes with or prevents the delivery
3 of such services, the director may petition the appropriate court for an order to
4 enjoin the interference with the delivery of the services. The petition shall allege
5 the consent of the eligible adult and shall allege specific facts sufficient to show
6 that the eligible adult faces a likelihood of serious physical harm and is in need
7 of the protective services and that delivery is barred by the person named in the
8 petition. If the court finds upon a preponderance of evidence that the allegations
9 in the petition are true, the court may issue an order enjoining the interference
10 with the delivery of the protective services and may establish such conditions and
11 restrictions on the delivery as the court deems necessary and proper under the
12 circumstances.

[660.280.] **192.2121.** When an eligible adult facing the likelihood of
2 serious physical harm and in need of protective services is unable to give consent
3 because of incapacity or legal disability and the guardian of the eligible adult
4 refuses to provide the necessary services or allow the provision of such services,
5 the director shall inform the court having supervisory jurisdiction over the
6 guardian of the facts showing that the eligible adult faces the likelihood of serious
7 physical harm and is in need of protective services and that the guardian refuses
8 to provide the necessary services or allow the provision of such services under the
9 provisions of sections [660.250 to 660.295] **192.2100 to 192.2130**. Upon receipt
10 of such information, the court may take such action as it deems necessary and
11 proper to insure that the eligible adult is able to meet his essential human needs.

[660.285.] **192.2124.** 1. If the director determines after an investigation
2 that an eligible adult is unable to give consent to receive protective services and
3 presents a likelihood of serious physical harm, the director may initiate
4 proceedings pursuant to chapter 202, RSMo, or chapter 475, RSMo, if appropriate.

5 2. In order to expedite adult guardianship and conservatorship cases, the
6 department may retain, within existing funding sources of the department, legal
7 counsel on a case-by-case basis.

[660.290.] **192.2127.** 1. When a peace officer has probable cause to
2 believe that an eligible adult will suffer an imminent likelihood of serious
3 physical harm if not immediately placed in a medical facility for care and
4 treatment, that the adult is incapable of giving consent, and that it is not possible
5 to follow the procedures in section [660.285] **192.2124**, the officer may transport,

6 or arrange transportation for, the eligible adult to an appropriate medical facility
7 which may admit the eligible adult and shall notify the next of kin, if known, and
8 the director.

9 2. Where access to the eligible adult is barred and a substantial likelihood
10 exists of serious physical harm resulting to the eligible adult if he is not
11 immediately afforded protective services, the peace officer may apply to the
12 appropriate court for a warrant to enter upon the described premises and remove
13 the eligible adult. The application for the warrant shall identify the eligible adult
14 and the circumstances and facts which require the issuance of the warrant.

15 3. If immediately upon admission to a medical facility, a person who is
16 legally authorized to give consent for the provision of medical treatment for the
17 eligible adult, has not given or refused to give such consent, and it is the opinion
18 of the medical staff of the facility that treatment is necessary to prevent serious
19 physical harm, the director or the head of the medical facility shall file a petition
20 in the appropriate court for an order authorizing specific medical treatment. The
21 court shall hold a hearing and issue its decision forthwith. Notwithstanding the
22 above, if a licensed physician designated by the facility for such purpose examines
23 the eligible adult and determines that the treatment is immediately or
24 imminently necessary and any delay occasioned by the hearing provided in this
25 subsection would jeopardize the life of the person affected, the medical facility
26 may treat the eligible adult prior to such court hearing.

27 4. The court shall conduct a hearing pursuant to chapter 475, RSMo,
28 forthwith and, if the court finds the eligible adult incapacitated, it shall appoint
29 a guardian ad litem for the person of the eligible adult to determine the nature
30 and extent of the medical treatment necessary for the benefit of the eligible adult
31 and to supervise the rendition of such treatment. The guardian ad litem shall
32 promptly report the completion of treatment to the court, who shall thereupon
33 conduct a restoration hearing or a hearing to appoint a permanent guardian.

34 5. The medical care under this section may not be rendered in a mental
35 health facility unless authorized pursuant to the civil commitment procedures in
36 chapter 632, RSMo.

37 6. Nothing contained in this section or in any other section of sections
38 [660.250 to 660.295] **192.2100 to 192.2130** shall be construed as requiring
39 physician or medical care or hospitalization of any person who, because of
40 religious faith or conviction, relies on spiritual means or prayer to cure or prevent
41 disease or suffering nor shall any provision of sections [660.250 to 660.295]

42 **192.2100 to 192.2130** be construed so as to designate any person as an eligible
43 adult who presents a likelihood of suffering serious physical harm and is in need
44 of protective services solely because such person, because of religious faith or
45 conviction, relies on spiritual means or prayer to cure or prevent disease or
46 suffering.

[660.295.] **192.2130.** If an eligible adult does not consent to the receipt
2 of reasonable and necessary protective services, or if an eligible adult withdraws
3 previously given consent, the protective services shall not be provided or
4 continued; except that, if the director has reasonable cause to believe that the
5 eligible adult lacks the capacity to consent, the director may seek a court order
6 pursuant to the provisions of section [660.285] **192.2124.**

[198.070.] **192.2150.** 1. [When] **As used in sections 192.2150 to**
2 **192.2187, unless the context clearly indicates otherwise, the following**
3 **terms mean:**

4 (1) **"Consumer", a consumer of personal care assistance services**
5 **as defined in section 208.900, RSMo;**

6 (2) **"In-home services client", as defined in section 192.2100, or a**
7 **healthy children and youth program participant who receives in-home**
8 **care authorized by the department;**

9 (3) **"Misappropriation", the dishonest conversion of property or**
10 **moneys of a patient, resident, in-home services client, or consumer by**
11 **a provider, a principal in the operation of a provider, or an employee**
12 **of a provider;**

13 (4) **"Patient", any patient of any entity licensed or certified under**
14 **chapter 197, RSMo, or a client of an adult day care provider, as defined**
15 **in section 192.2200;**

16 (5) **"Personal care attendant", a person hired to provide personal**
17 **care assistance services as defined in section 209.900, RSMo;**

18 (6) **"Principal", a provider officer, director, owner, partner, or**
19 **other person with primary management or supervisory responsibilities;**

20 (7) **"Provider", any person or entity who:**

21 (a) **Is licensed or certified as an operator under chapters 197 or**
22 **198, RSMo;**

23 (b) **Provides in-home services under contract with the**
24 **department;**

25 (c) **Employs health care staff for temporary or intermittent**
26 **placement in health care facilities;**

27 **(d) Is a licensed adult day care provider;**

28 **(e) Is a personal care assistance services vendor agency as**
29 **defined in section 208.900, RSMo; or**

30 **(f) Has a Medicaid participation agreement and employs persons**
31 **to deliver any kind of services provided for patients, in-home services**
32 **clients, or consumers in their private homes;**

33 **(8) "Resident", any resident of any entity licensed or certified**
34 **under chapter 198, RSMo.**

35 **2. Any adult day care worker; chiropractor; Christian Science practitioner;**
36 **coroner; dentist; embalmer; employee of the departments of social services,**
37 **mental health, or health and senior services; employee of a local area agency on**
38 **aging or an organized area agency on aging program; funeral director; home**
39 **health agency or home health agency employee; hospital and clinic personnel**
40 **engaged in examination, care, or treatment of persons; in-home services owner,**
41 **provider, operator, or employee; law enforcement officer; long-term care facility**
42 **administrator or employee; medical examiner; medical resident or intern; mental**
43 **health professional; minister; nurse; nurse practitioner; optometrist; other health**
44 **practitioner; peace officer; pharmacist; physical therapist; physician; physician's**
45 **assistant; podiatrist; probation or parole officer; psychologist; social worker;**
46 **personal care assistance services vendor employee or attendant; or other**
47 **person charged with the care of a person sixty years of age or older or an eligible**
48 **adult as defined in section 192.2100 who has reasonable cause to believe that**
49 **a [resident of a facility] patient, resident, in-home services client, or**
50 **consumer has been abused or neglected as a result of a provider's delivery**
51 **of or failure to deliver services, [he or she] that misappropriation of**
52 **property or moneys belonging to a patient, resident, in-home services**
53 **client, or consumer has occurred as a result of a provider's delivery of**
54 **or failure to deliver services, or that the falsification of any documents**
55 **verifying service delivery of in-home services or consumer-directed**
56 **services has occurred, shall immediately report or cause a report to be made**
57 **to the department.**

58 **[2.] 3. In addition to those persons required to report under**
59 **subsection 2 of this section, any other person having reasonable cause**
60 **to believe that a patient, resident, in-home services client, or consumer**
61 **has been abused or neglected as a result of a provider's delivery of or**
62 **failure to deliver services, that misappropriation of property or**

63 moneys belonging to a patient, resident, in-home services client, or
64 consumer occurred as a result of the provider's delivery of services, or
65 that the falsification of any documents verifying service delivery of in-
66 home services or consumer-directed services has occurred may report
67 such information to the department.

68 4. If a report is made by the patient's, in-home services client's,
69 or resident's physician, the department shall provide information
70 regarding the progress of the investigation to the physician upon
71 request.

72 5. The report shall contain:

73 (1) The name and address of the [facility, the name of the resident,]
74 provider and the patient, resident, in-home services client or consumer;

75 (2) Information regarding the nature of the abuse or neglect,
76 misappropriation, or falsification of documents verifying service
77 delivery;

78 (3) The name of the complainant[,]; and

79 (4) Any other information which might be helpful in an investigation.

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

84 4. In addition to the penalties imposed by this section, any administrator
85 who knowingly conceals any act of abuse or neglect resulting in death or serious
86 physical injury, as defined in section 565.002, RSMo, is guilty of a class D felony.

87 5. In addition to those persons required to report pursuant to subsection
88 1 of this section, any other person having reasonable cause to believe that a
89 resident has been abused or neglected may report such information to the
90 department.]

91 6. [Upon receipt of a report, the department shall initiate an investigation
92 within twenty-four hours and, as soon as possible during the course of the
93 investigation, shall notify the resident's next of kin or responsible party of the
94 report and the investigation and further notify them whether the report was
95 substantiated or unsubstantiated unless such person is the alleged perpetrator
96 of the abuse or neglect.] **Upon receipt of a report that indicates an
97 imminent danger to the health, safety, or welfare of a patient, resident,
98 in-home services client, or consumer, or substantial probability that**

99 **death or serious physical injury will result, the department shall make**
100 **a prompt and thorough investigation. The department shall initiate all**
101 **other investigations as soon as practicable. In the case of**
102 **investigations involving facilities licensed under chapter 198, RSMo:**

103 **(1) If the resident has been appointed a guardian or conservator,**
104 **or both, under chapter 475, RSMo, or if the resident has been certified**
105 **to be incapacitated under sections 404.800 to 404.872, RSMo, the**
106 **department, as soon as possible during the course of the investigation,**
107 **shall notify the resident's legal representative, guardian, conservator,**
108 **or agent under a durable power of attorney for health care of the**
109 **report, the investigation, and whether the report was substantiated or**
110 **unsubstantiated unless such person is the alleged perpetrator;**

111 **(2) The department may notify family members or guardians of**
112 **the results of investigations in accordance with section 198.532, RSMo.**
113 As provided in section 565.186, RSMo, substantiated reports of elder abuse shall
114 be promptly reported by the department to the appropriate law enforcement
115 agency and prosecutor.

116 7. If the investigation indicates possible abuse or neglect [of a resident],
117 **misappropriation of property or moneys, or falsification of documents**
118 **verifying service delivery of in-home services or consumer-directed**
119 **services, the investigator shall refer the complaint together with the**
120 **investigator's report to the department director or the director's designee for**
121 **appropriate action. When information gained from an investigation**
122 **indicates a crime has occurred, the department shall report such**
123 **information to appropriate law enforcement authorities.**

124 8. If, during the investigation or at its completion, the department has
125 reasonable cause to believe that immediate [removal] **action** is necessary to
126 protect the **patient, resident, in-home services client or consumer** from
127 abuse or neglect **or misappropriation of property or moneys, the**
128 **department or the local prosecuting attorney may, or the attorney general upon**
129 **request of the department shall, file a petition for temporary care and protection**
130 **of the patient, resident, in-home services client or consumer in a circuit**
131 **court of competent jurisdiction. The circuit court in which the petition is filed**
132 **shall have equitable jurisdiction to issue an ex parte order granting the**
133 **department authority for the temporary care and protection of the resident, for**
134 **a period not to exceed thirty days.**

135 [8.] 9. Reports shall be confidential, [as provided pursuant to section
136 660.320, RSMo] shall not be deemed a public record, and shall not be
137 subject to the provisions of section 109.180, RSMo, or chapter 610,
138 RSMo. The name of the complainant or any person mentioned in the
139 reports shall not be disclosed unless:

140 (1) The complainant, patient, resident, in-home services client,
141 or consumer mentioned, or the patient's, resident's, in-home services
142 client's or consumer's legal representative agrees to disclosure of his
143 or her name;

144 (2) The department determines that disclosure is necessary to
145 prevent further abuse or neglect, misappropriation of property or
146 moneys, or falsification of any documents verifying service delivery of
147 in-home services or consumer-directed services;

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

150 (4) Release of a name is required in connection with a review by
151 the administrative hearing commission in accordance with section
152 198.039, RSMo;

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

156 (6) Release of a name is requested by the department of social
157 services for the purpose of licensure under chapter 210, RSMo.

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

161 [9.] 11. Anyone, except any person who has abused or neglected a
162 patient, resident [in a facility], in-home services client or consumer, or
163 who has benefitted from the misappropriation of property or moneys
164 of a patient, resident, in-home services client, or consumer, or who has
165 falsified documents verifying service delivery of in-home services or
166 consumer-directed services, who makes a report pursuant to this section or
167 who testifies in any administrative or judicial proceeding arising from the report
168 shall be immune from any civil or criminal liability for making such a report or
169 for testifying except for liability for perjury, unless such person acted negligently,
170 recklessly, in bad faith or with malicious purpose. It is a crime pursuant to
171 section 565.186 and 565.188, RSMo, for any person to purposely file a false report

172 of elder abuse or neglect.

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

176 11. No person who directs or exercises any authority in a facility shall
177 evict, harass, dismiss or retaliate against a resident or employee because such
178 resident or employee or any member of such resident's or employee's family has
179 made a report of any violation or suspected violation of laws, ordinances or
180 regulations applying to the facility which the resident, the resident's family or an
181 employee has reasonable cause to believe has been committed or has
182 occurred. Through the existing department information and referral telephone
183 contact line, residents, their families and employees of a facility shall be able to
184 obtain information about their rights, protections and options in cases of eviction,
185 harassment, dismissal or retaliation due to a report being made pursuant to this
186 section.

187 12. Any person who abuses or neglects a resident of a facility is subject
188 to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo.

189 13.] **12.** The department shall maintain the employee disqualification list
190 and place on the employee disqualification list the names of any persons who are
191 or have been employed [in any facility] **by any provider or consumer** and who
192 have been finally determined by the department pursuant to section [660.315,
193 RSMo,] **192.2175:**

194 **(1)** To have **purposely**, knowingly or recklessly abused or neglected a
195 **patient, resident, in-home services client, or consumer. For purposes of**
196 **this section, "abuse" and "neglect" shall have the same meanings as such**
197 **terms are defined in section 192.2100.** For purposes of this section only,
198 **"purposely", "knowingly" and "recklessly" shall have the meanings [that are**
199 **ascribed to them in this section. A person acts "knowingly" with respect to the**
200 **person's conduct when a reasonable person should be aware of the result caused**
201 **by his or her conduct. A person acts "recklessly" when the person consciously**
202 **disregards a substantial and unjustifiable risk that the person's conduct will**
203 **result in serious physical injury and such disregard constitutes a gross deviation**
204 **from the standard of care that a reasonable person would exercise in the**
205 **situation] as such terms are defined in chapter 562, RSMo;**

206 **(2)** To have **falsified documents verifying service delivery to a**
207 **patient, resident, in-home services client, or consumer;**

208 **(3) To have misappropriated property or moneys belonging to a**
209 **patient, resident, in-home services client, or consumer.**

210 **13. No person who directs or exercises any authority on behalf**
211 **of a provider and no personal care attendant, as defined in section**
212 **208.900, RSMo, shall evict, harass, dismiss, or retaliate against a**
213 **patient, resident, in-home services client, consumer, or employee**
214 **because such patient, resident, in-home services client, consumer, or**
215 **employee or any member of such patient's, resident's, in-home services**
216 **client's, consumer's, or employee's family has made a report of any**
217 **violation or suspected violation of laws, standards, or regulations**
218 **applying to the provider or attendant which the complainant has**
219 **reasonable cause to believe has been committed or has**
220 **occurred. Through existing department information and referral**
221 **telephone contact line, patients, residents, in-home services clients,**
222 **consumers, their families, and employees of a provider shall be able to**
223 **obtain information regarding their rights, protections, and options in**
224 **cases of eviction, harassment, dismissal, or retaliation due to a report**
225 **being made under this section.**

226 **14. In the case of investigations involving facilities licensed**
227 **under chapter 198, RSMo, the timely self-reporting of incidents to the central**
228 **registry by a [facility] provider shall continue to be investigated in accordance**
229 **with department policy, and shall not be counted or reported by the department**
230 **as a hot-line call but rather a self-reported incident. If the self-reported incident**
231 **results in a regulatory violation, such incident shall be reported as a**
232 **substantiated report.**

233 **15. Any potential consumer, in-home services client, or patient**
234 **whose services are funded by Medicaid shall be screened to ascertain**
235 **if they are included on the Missouri sexual offender registry**
236 **maintained by the Missouri state highway patrol. If any potential**
237 **consumer, in-home services client, or patient whose services are funded**
238 **by Medicaid is listed on the Missouri sexual offender registry, the**
239 **department shall notify the provider of such at the time the referral is**
240 **made.**

192.2153. 1. It shall be a class A misdemeanor for any person
2 **required to report or cause a report of abuse or neglect or**
3 **misappropriation of property or moneys to be made to the department**
4 **under subsection 2 of section 192.2150 if such person fails to make such**

5 a report or cause such a report to be made within twenty-four hours
6 after such act has occurred or been discovered.

7 2. Any person who abuses or neglects an in-home services, home
8 health patient, or consumer is subject to criminal prosecution under
9 sections 565.180, 565.182, or 565.184, RSMo. Any person who puts to his
10 or her own use or the use of the provider or otherwise diverts from the
11 in-home services client, home health patient, or consumer's use of any
12 personal property or funds of the in-home services client, home health
13 patient, or consumer, or falsifies any documents for service delivery,
14 is guilty of a class A misdemeanor.

15 3. In addition to any other penalties imposed by this section, any
16 provider, principal in the operation of a provider, as defined in section
17 192.2150, or employee of a provider who knowingly conceals any act of
18 abuse or neglect that results in death or serious physical injury, as
19 defined in section 565.002, RSMo, is guilty of a class D felony.

20 4. If a provider willfully and knowingly fails to report abuse by
21 an employee of the provider and such employee is later found guilty or
22 pleads guilty to a violation of section 565.180, 565.182, or 565.184, RSMo,
23 the provider may be subject to an administrative penalty of one
24 thousand dollars per violation to be collected by the department. Any
25 moneys collected shall be transferred to the state school moneys fund
26 as established in section 166.051, RSMo, and distributed to the public
27 schools of this state in the manner provided in section 163.031,
28 RSMo. Any provider that has an administrative penalty imposed by the
29 department may seek an administrative review of the department's
30 action under chapter 621, RSMo. Any decision of the administrative
31 hearing commission may be appealed to the circuit court in the county
32 where the violation occurred for judicial review as contested case
33 under chapter 536, RSMo.

[660.315.] 192.2175. 1. After an investigation and a determination has
2 been made to place a person's name on the employee disqualification list, that
3 person shall be notified in writing mailed to his or her last known address that:

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

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

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

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

12 2. **Notice by mail to the last known address, as provided by the**
13 **person to the person's employer at the time of the allegation, shall**
14 **satisfy the requirements of this section. If the person has provided the**
15 **department with a more recent address, notice shall be sent to the more**
16 **recent address. Notice shall be complete upon such mailing.** If no reply
17 has been received within thirty days of mailing the notice, the department may
18 include the name of such person on its list. The length of time the person's name
19 shall appear on the employee disqualification list shall be determined by the
20 director or the director's designee, based upon the criteria contained in subsection
21 9 of this section.

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

28 4. If a person's name is included on the employee disqualification list
29 without notice **in accordance with subsections 1 and 2 of this section** by
30 the department, such person may file a request with the department for removal
31 of the name or for a hearing. Within thirty days after receipt of the request, the
32 department shall either remove the name from the list or grant a hearing and set
33 a date therefor.

34 5. Any hearing shall be conducted [in the county of the person's residence]
35 by the director of the department or the director's designee **in Cole County or**
36 **in the county of the person's residence, or by telephone, in the**
37 **discretion of the director or the director's designee.** The provisions of
38 chapter 536, RSMo, for a contested case except those provisions or amendments
39 which are in conflict with this section, shall apply to and govern the proceedings
40 contained in this section and the rights and duties of the parties involved. The
41 person appealing such an action shall be entitled to present evidence, pursuant
42 to the provisions of chapter 536, RSMo, relevant to the allegations.

43 6. Upon the record made at the hearing, the director of the department
44 or the director's designee shall determine all questions presented and shall

45 determine whether the person shall be listed on the employee disqualification
46 list. The director of the department or the director's designee shall clearly state
47 the reasons for his or her decision and shall include a statement of findings of
48 fact and conclusions of law pertinent to the questions in issue.

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

54 8. A decision by the director shall be inadmissible in any civil action
55 brought against a [facility or the in-home services provider agency] **provider or**
56 **employee of said provider, or personal care attendant** and arising out of
57 the facts and circumstances which brought about the employment disqualification
58 proceeding, unless the civil action is brought against the [facility or the in-home
59 services provider agency] **provider, or employee of said provider, or**
60 **personal care attendant** by the department of health and senior services or
61 one of its divisions.

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

65 (1) Whether the person acted **purposely**, recklessly or knowingly, as
66 defined in chapter 562, RSMo;

67 (2) The degree of the physical, sexual, or emotional injury or harm; or the
68 degree of the imminent danger to the health, safety or welfare of a [resident or
69 in-home services client] **the alleged victim**;

70 (3) The degree of misappropriation of the property or funds, or
71 falsification of any documents for service delivery of [an in-home services client]
72 **a patient, resident, in-home services client, or consumer**;

73 (4) Whether the person has previously been listed on the employee
74 disqualification list;

75 (5) Any mitigating circumstances;

76 (6) Any aggravating circumstances; and

77 (7) Whether alternative sanctions resulting in conditions of continued
78 employment are appropriate in lieu of placing a person's name on the employee
79 disqualification list. Such conditions of employment may include, but are not
80 limited to, additional training and employee counseling. Conditional employment

81 shall terminate upon the expiration of the designated length of time and the
82 person's submitting documentation which fulfills the department of health and
83 senior services' requirements.

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

87 11. The department shall [provide] **make available** the list maintained
88 pursuant to this section to other state departments upon request and to any
89 person, corporation or association who:

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

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

92 (3) Employs [nurses and nursing assistants] **health care staff** for
93 temporary or intermittent placement [in health care facilities] **with providers;**

94 (4) Is approved by the department to issue certificates for nursing
95 assistants training; [or]

96 (5) Is an entity licensed under chapter 197, RSMo;

97 (6) **Is a personal care assistance services vendor agency, as**
98 **defined in section 208.900, RSMo;**

99 (7) **Is an adult day care provider licensed under sections 192.2200**
100 **to 192.2227;**

101 (8) **Is a recognized school of nursing, medicine, or other health**
102 **profession that receives the list for the purpose of checking its students**
103 **who participate in clinical rotations with entities described in**
104 **subdivisions (1), (2), or (5) of this subsection; or**

105 (9) **Is a consumer reporting agency regulated by the Fair Credit**
106 **Reporting Act that conducts employee background checks on behalf of**
107 **entities listed in subdivisions (1) to (8) of this subsection.**

108 The department shall inform any person listed above who inquires of the
109 department whether or not a particular name is on the list. **No person,**
110 **corporation, or association who is entitled to access the employee**
111 **disqualification list may disclose the information to any person,**
112 **corporation, or association who is not entitled to access the employee**
113 **disqualification list. Any person, corporation, or association who is**
114 **entitled to access the employee disqualification list who discloses the**
115 **information to any person, corporation, or association who is not**
116 **entitled to access the employee disqualification list shall be guilty of an**

117 **infraction.** The department may require that the request be made in writing.

118 **12. The department shall, upon request, provide to the division**
119 **of employment security within the department of labor and industrial**
120 **relations copies of the investigative reports related to an employee**
121 **being placed on the employee disqualification list.**

122 **13.** No person, corporation or association who received the employee
123 disqualification list under **subdivisions (1) to (7) of** subsection 11 of this
124 section shall knowingly employ any person who is on the employee
125 disqualification list. **No person who is listed on the employee**
126 **disqualification list shall be paid from public moneys as a personal care**
127 **assistance services attendant.** Any person, corporation or association who
128 received the employee disqualification list under **subdivisions (1) to (7) of**
129 subsection 11 of this section, or any **consumer or** person responsible for
130 providing health care service, who declines to employ or terminates a person
131 whose name is listed in this section shall be immune from suit by that person or
132 anyone else acting for or in behalf of that person for the failure to employ or for
133 the termination of the person whose name is listed on the employee
134 disqualification list.

135 **[13.] 14.** Any employer who is required to discharge an employee because
136 the employee was placed on **[a] the employee** disqualification list maintained
137 by the department of health and senior services **under section 192.2175** [after
138 the date of hire], **or has a disqualifying criminal offense as listed in**
139 **subsection 7 of section 192.2178**, shall not be charged for unemployment
140 insurance benefits based on wages paid to the employee for work prior to the date
141 of discharge, pursuant to section 288.100, RSMo. **Any person who is**
142 **employed in a position for which employment is prohibited while such**
143 **person is listed on the employee disqualification list shall have his or**
144 **her placement on the employee disqualification list extended one year.**

145 **[14.] 15.** Any person who has been listed on the employee disqualification
146 list may request that the director remove his or her name from the employee
147 disqualification list. The request shall be written and may not be made more
148 than once every twelve months. The request will be granted by the director upon
149 a clear showing, by written submission only, that the person will not commit
150 additional acts of abuse, neglect, misappropriation of the property or funds, or the
151 falsification of any documents **[of] verifying** service delivery to **[an in-home**
152 **services client], a patient, resident, in-home services client, or**

153 **consumer.** The director may make conditional the removal of a person's name
154 from the list on any terms that the director deems appropriate, and failure to
155 comply with such terms may result in the person's name being relisted. The
156 director's determination of whether to remove the person's name from the list is
157 not subject to appeal.

[660.317.] **192.2178.** 1. For the purposes of this section, the term
2 "provider" [means any person, corporation or association who:

- 3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- 4 (2) Provides in-home services under contract with the department;
- 5 (3) Employs nurses or nursing assistants for temporary or intermittent
6 placement in health care facilities;
- 7 (4) Is an entity licensed pursuant to chapter 197, RSMo;
- 8 (5) Is a public or private facility, day program, residential facility or
9 specialized service operated, funded or licensed by the department of mental
10 health; or

11 (6) Is a licensed adult day care provider] **has the same meaning as**
12 **such term is defined in section 192.2150, except that the term "provider"**
13 **also includes a public or private facility, day program, residential**
14 **facility or specialized service operated, funded or licensed by the**
15 **department of mental health.**

16 2. For the purpose of this section "patient or resident" has the same
17 meaning as such term is defined in section 43.540, RSMo; **"in-home services**
18 **client" has the same meaning as such term is defined in section**
19 **192.2150, and "consumer" has the same meaning as such term is defined**
20 **in section 208.900, RSMo.**

21 3. Prior to [allowing any person who has been hired as] **hiring a**
22 **full-time, part-time or temporary employee for any position to have contact**
23 **with any patient [or], resident, or consumer, the provider shall, or in the case**
24 **of temporary employees hired through or contracted for an employment agency,**
25 **the employment agency shall prior to sending a temporary employee to a provider**
26 **make an inquiry to the department of health and senior services**
27 **whether the person is listed on the employee disqualification list as**
28 **provided in section 192.2175.**

29 4. **Prior to allowing any person who has been hired as a full-time,**
30 **part-time, or temporary position to have contact with any patient,**
31 **resident, in-home services client, or consumer, the provider shall, on**

32 **the case of temporary employees hired through or contracted for an**
33 **employment agency, the employment agency shall prior to sending a**
34 **temporary employee to a provider:**

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

59 (2) [Make an inquiry to the department of health and senior services
60 whether the person is listed on the employee disqualification list as provided in
61 section 660.315] **Request of the person a physical address where the**
62 **person may be located in addition to any other address provided by the**
63 **person such as a post office box address. For any elder-care worker**
64 **listed in the family care registry or who has submitted the registration**
65 **form required by sections 210.900 to 210.936, RSMo, a provider may**
66 **access the family care registry in lieu of the requirements established**
67 **under section 192.2175 or subsections 3 to 5 of section 192.2178.**

68 [4.] 5. When the provider requests a criminal background check pursuant
69 to section 43.540, RSMo, the requesting entity may require that the applicant
70 reimburse the provider for the cost of such record check. When a provider
71 requests a nationwide criminal background check pursuant to subdivision (1) of
72 subsection 3 of this section, the total cost to the provider of any background check
73 required pursuant to this section shall not exceed five dollars which shall be paid
74 to the state. State funding and the obligation of a provider to obtain a nationwide
75 criminal background check shall be subject to the availability of appropriations.

76 [5.] 6. An applicant for a position to have contact with patients, **in-home**
77 **services clients**, or residents of a provider shall:

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

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

85 (3) Disclose if the applicant is listed on the employee disqualification list
86 as provided in section [660.315] **192.2175 and disclose whether the**
87 **applicant is a registered sexual offender under section 589.400, RSMo,**
88 **listed in the Missouri uniform law enforcement system (MULES).**

89 [6.] 7. An applicant who knowingly fails to disclose his or her criminal
90 history as required in subsection 5 of this section is guilty of a class A
91 misdemeanor. A provider is guilty of a class A misdemeanor if the provider
92 knowingly hires or retains a person to have contact with patients, **in-home**
93 **services clients**, or residents and the person has been convicted of, pled guilty
94 to or nolo contendere in this state or any other state or has been found guilty of
95 a crime, which if committed in Missouri would be a class A or B felony violation
96 of chapter **195**, 565, 566 or 569, RSMo, a **violation of section 570.090, RSMo,**
97 **or any felony violation or three or more misdemeanor violations of**
98 **section 570.030, RSMo, a violation of section 570.145,** or any violation of
99 subsection [3] 1 of section [198.070, RSMo,] **192.2153** or section 568.020,
100 RSMo. **For any persons hired on or after August 28, 2007, a provider**
101 **shall not hire any person with a disqualifying criminal history unless**
102 **such person has first obtained a good cause waiver of the disqualifying**
103 **criminal history. For any person employed as of August 28, 2007, a**

104 **provider shall not retain any person with a disqualifying criminal**
105 **history after January 1, 2008, unless such person has submitted a**
106 **completed good cause waiver application prior to January 1, 2008. If**
107 **the good cause waiver is denied, the provider shall not continue to**
108 **retain such person after the provider is notified of the denial of the**
109 **good cause waiver.**

110 **8. For any persons hired on or after August 28, 2007, a provider**
111 **is guilty of a class A misdemeanor if the provider knowingly hires or**
112 **retains any person who is a registered sex offender under section**
113 **589.400.**

114 **[7.] 9. Any in-home services provider agency or home health agency**
115 **[shall be] or hospice is guilty of a class A misdemeanor if such agency or**
116 **hospice knowingly [employs] hires or retains a person to provide in-home**
117 **services, hospice services, or home health services to any in-home services**
118 **client, hospice patient, or home health patient and such person [either] refuses**
119 **to register with the family care safety registry [or is listed on any of the**
120 **background check lists in the family care safety registry pursuant to]. Any in-**
121 **home services provider agency, home health agency, or hospice is**
122 **guilty of a class A misdemeanor if such agency or hospice allows an**
123 **employee to have contact with a patient or in-home services client**
124 **prior to requesting a background screening from the family care safety**
125 **registry under sections 210.900 to 210.937, RSMo.**

126 **[8.] 10. The highway patrol shall examine whether protocols can be**
127 **developed to allow a provider to request a statewide fingerprint criminal records**
128 **review check through local law enforcement agencies.**

129 **[9.] 11. A provider may use a private investigatory agency rather than**
130 **the highway patrol to do a criminal history records review check, and**
131 **alternatively, the applicant pays the private investigatory agency such fees as the**
132 **provider and such agency shall agree.**

133 **[10.] 12. Except for the hiring restriction based on the department of**
134 **health and senior services employee disqualification list established pursuant to**
135 **section [660.315] 192.2175, and the registration as a sexual offender under**
136 **section 589.400, RSMo, the department of health and senior services shall**
137 **promulgate rules and regulations to waive the hiring restrictions pursuant to this**
138 **section for good cause. For purposes of this section, "good cause" means the**
139 **department has made a determination by examining [the employee's prior work**

140 history and other relevant factors that such employee does not present a risk to
141 the health or safety of residents] **such materials submitted by the applicant**
142 **under regulations established by the department, and determined that**
143 **the hiring restriction contained in subsections 7 and 9 of this section**
144 **is removed and the hiring decision becomes the responsibility of the**
145 **provider.**

[660.300.] **192.2181.** 1. [When any adult day care worker; chiropractor;
2 Christian Science practitioner; coroner; dentist; embalmer; employee of the
3 departments of social services, mental health, or health and senior services;
4 employee of a local area agency on aging or an organized area agency on aging
5 program; funeral director; home health agency or home health agency employee;
6 hospital and clinic personnel engaged in examination, care, or treatment of
7 persons; in-home services owner, provider, operator, or employee; law enforcement
8 officer; long-term care facility administrator or employee; medical examiner;
9 medical resident or intern; mental health professional; minister; nurse; nurse
10 practitioner; optometrist; other health practitioner; peace officer; pharmacist;
11 physical therapist; physician; physician's assistant; podiatrist; probation or parole
12 officer; psychologist; or social worker has reasonable cause to believe that an
13 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
15 department. If the report is made by a physician of the in-home services client,
16 the department shall maintain contact with the physician regarding the progress
17 of the investigation.

18 2.] When a report of deteriorating physical condition resulting in possible
19 abuse or neglect of an in-home services client **or consumer** is received by the
20 department, the client's **or consumer's** case manager and the department nurse
21 shall be notified. The client's case manager shall investigate and immediately
22 report the results of the investigation to the department nurse. The department
23 may authorize the in-home services provider nurse to assist the case manager
24 with the investigation.

25 [3.] 2. If requested, local area agencies on aging shall provide volunteer
26 training to those persons listed in subsection [1] 2 of [this] section **192.2150**
27 regarding the detection and report of abuse and neglect [pursuant to this section].

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

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

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

41 7. If the investigation indicates possible abuse or neglect of an in-home
42 services client or home health patient, the investigator shall refer the complaint
43 together with his or her report to the department director or his or her designee
44 for appropriate action. If, during the investigation or at its completion, the
45 department has reasonable cause to believe that immediate action is necessary
46 to protect the in-home services client or home health patient from abuse or
47 neglect, the department or the local prosecuting attorney may, or the attorney
48 general upon request of the department shall, file a petition for temporary care
49 and protection of the in-home services client or home health patient in a circuit
50 court of competent jurisdiction. The circuit court in which the petition is filed
51 shall have equitable jurisdiction to issue an ex parte order granting the
52 department authority for the temporary care and protection of the in-home
53 services client or home health patient, for a period not to exceed thirty days.

54 8. Reports shall be confidential, as provided under section 660.320.

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

61 10. Within five working days after a report required to be made under this
62 section is received, the person making the report shall be notified in writing of
63 its receipt and of the initiation of the investigation.

64 11. No person who directs or exercises any authority in an in-home
65 services provider agency or home health agency shall harass, dismiss or retaliate
66 against an in-home services client or home health patient, or an in-home services

67 employee or a home health agency employee because he or any member of his or
68 her family has made a report of any violation or suspected violation of laws,
69 standards or regulations applying to the in-home services provider agency or
70 home health agency or any in-home services employee or home health agency
71 employee which he has reasonable cause to believe has been committed or has
72 occurred.

73 12. Any person who abuses or neglects an in-home services client or home
74 health patient is subject to criminal prosecution under section 565.180, 565.182,
75 or 565.184, RSMo. If such person is an in-home services employee and has been
76 found guilty by a court, and if the supervising in-home services provider willfully
77 and knowingly failed to report known abuse by such employee to the department,
78 the supervising in-home services provider may be subject to administrative
79 penalties of one thousand dollars per violation to be collected by the department
80 and the money received therefor shall be paid to the director of revenue and
81 deposited in the state treasury to the credit of the general revenue fund. Any
82 in-home services provider which has had administrative penalties imposed by the
83 department or which has had its contract terminated may seek an administrative
84 review of the department's action pursuant to chapter 621, RSMo. Any decision
85 of the administrative hearing commission may be appealed to the circuit court in
86 the county where the violation occurred for a trial de novo. For purposes of this
87 subsection, the term "violation" means a determination of guilt by a court.

88 13.] 3. The department shall establish a quality assurance and
89 supervision process for clients that requires an in-home services provider agency
90 to [conduct random visits to] verify compliance with program standards and
91 verify the accuracy of records kept by an in-home services employee.

92 [14. The department shall maintain the employee disqualification list and
93 place on the employee disqualification list the names of any persons who have
94 been finally determined by the department, pursuant to section 660.315, to have
95 recklessly, knowingly or purposely abused or neglected an in-home services client
96 or home health patient while employed by an in-home services provider agency
97 or home health agency. For purposes of this section only, "knowingly" and
98 "recklessly" shall have the meanings that are ascribed to them in this section. A
99 person acts "knowingly" with respect to the person's conduct when a reasonable
100 person should be aware of the result caused by his or her conduct. A person acts
101 "recklessly" when the person consciously disregards a substantial and
102 unjustifiable risk that the person's conduct will result in serious physical injury

103 and such disregard constitutes a gross deviation from the standard of care that
104 a reasonable person would exercise in the situation.

105 15.] 4. At the time a client has been assessed to determine the level of
106 care as required by rule and is eligible for in-home services, the department shall
107 conduct a "Safe at Home Evaluation" to determine the client's physical, mental,
108 and environmental capacity. The department shall develop the safe at home
109 evaluation tool by rule in accordance with chapter 536, RSMo. The purpose of the
110 safe at home evaluation is to assure that each client has the appropriate level of
111 services and professionals involved in the client's care. The plan of service or
112 care for each in-home client shall be authorized by a nurse. The
113 department may authorize the licensed in-home services nurse, in lieu of the
114 department nurse, to conduct the assessment of the client's condition and to
115 establish a plan of services or care. The department may use the expertise,
116 services, or programs of other departments and agencies on a case-by-case basis
117 to establish the plan of service or care. The department may, as indicated by the
118 safe at home evaluation, refer any client to a mental health professional, as
119 defined in 9 CSR 30-4.030, for evaluation and treatment as necessary.

120 [16.] 5. Authorized nurse visits shall occur at least twice annually to
121 assess the client and the client's plan of services. The provider nurse shall report
122 the results of his or her visits to the client's case manager. If the provider nurse
123 believes that the plan of service requires alteration, the department shall be
124 notified and the department shall make a client evaluation. All authorized nurse
125 visits shall be reimbursed to the in-home services provider. All authorized nurse
126 visits shall be reimbursed outside of the nursing home cap for in-home services
127 clients whose services have reached one hundred percent of the average statewide
128 charge for care and treatment in an intermediate care facility, provided that the
129 services have been preauthorized by the department.

130 [17.] 6. All in-home services clients shall be advised of their rights by the
131 department at the initial evaluation. The rights shall include, but not be limited
132 to, the right to call the department for any reason, including dissatisfaction with
133 the provider or services. The department shall establish a process to receive such
134 nonabuse and neglect calls other than the elder abuse and neglect hotline.

135 [18.] 7. Subject to appropriations, all nurse visits authorized in **this**
136 **section and** sections [660.250 to 660.300] **192.2100 to 192.2130** shall be
137 reimbursed to the in-home services provider agency.

[660.321.] **192.2184.** Notwithstanding any other provision of law, the

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

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

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

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

14 (4) Any appropriate law enforcement agency, to perform its constitutional
15 or statutory duties;

16 (5) The eligible adult, his or her legal guardian or any other person
17 designated by the eligible adult; and

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

[660.310.] **192.2187.** 1. Notwithstanding any other provision of law, if
2 the department of health and senior services proposes to deny, suspend, place on
3 probation, or terminate an in-home services provider agency contract, the
4 department of health and senior services shall serve upon the applicant or
5 contractor written notice of the proposed action to be taken. The notice shall
6 contain a statement of the type of action proposed, the basis for it, the date the
7 action will become effective, and a statement that the applicant or contractor
8 shall have thirty days from the date of mailing or delivery of the notice to file a
9 complaint requesting a hearing before the administrative hearing
10 commission. The administrative hearing commission may consolidate an
11 applicant's or contractor's complaint with any proceeding before the
12 administrative hearing commission filed by such contractor or applicant pursuant
13 to subsection 3 of section 208.156, RSMo, involving a common question of law or
14 fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.120,
15 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which
16 the department has denied a contract to an in-home services provider agency, the
17 administrative hearing commission shall conduct a hearing to determine the
18 underlying basis for such denial. However, if the administrative hearing

19 commission finds that the contract denial is supported by the facts and the law,
20 the case need not be returned to the department. The administrative hearing
21 commission's decision shall constitute affirmation of the department's contract
22 denial.

23 2. The department of health and senior services may issue letters of
24 censure or warning without formal notice or hearing.

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

43 4. Stays granted to contractors by the administrative hearing commission
44 shall, as a condition of the stay, require at a minimum that the contractor under
45 the stay operate under the same contractual requirements and regulations as are
46 in effect, from time to time, as are applicable to all other contractors in the
47 program.

48 5. The administrative hearing commission shall make its final decision
49 based upon the circumstances and conditions as they existed at the time of the
50 action of the department and not based upon circumstances and conditions at the
51 time of the hearing or decision of the commission.

52 6. In any proceeding before the administrative hearing commission
53 pursuant to this section, the burden of proof shall be on the contractor or
54 applicant seeking review.

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

[660.400.] **192.2200**. As used in sections 199.025, RSMo, and [660.403
2 to 660.420] **192.2203 to 192.2227**, unless the context clearly indicates otherwise,
3 the following terms mean:

- 4 (1) "Adult", an individual over the age of eighteen;
- 5 (2) "Adult day care program", a group program designed to provide care
6 and supervision to meet the needs of functionally impaired adults for periods of
7 less than twenty-four hours but more than two hours per day in a place other
8 than the adult's own home;
- 9 (3) "Adult day care provider", the person, corporation, partnership,
10 association or organization legally responsible for the overall operation of the
11 adult day care program;
- 12 (4) "Department", the department of [social] **health and senior** services;
- 13 (5) "Director", the director of the division of aging;
- 14 (6) ["Division", the division of aging;
- 15 (7)] "Functionally impaired adult", an adult who by reason of age or
16 infirmity requires care and supervision;
- 17 [(8)] **(7)** "License", the document issued by the [division] **department**
18 in accordance with the provisions of sections [199.025, RSMo, and 660.403 to
19 660.420] **192.2203 to 192.2227** to an adult day care program which authorizes
20 the adult day care provider to operate the program in accordance with the
21 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
22 **192.2227** and the applicable rules promulgated pursuant thereto;
- 23 [(9)] **(8)** "Participant", a functionally impaired adult who is enrolled in
24 an adult day care program;
- 25 [(10)] **(9)** "Person", any individual, firm, corporation, partnership,
26 association, agency, or an incorporated or unincorporated organization regardless
27 of the name used;
- 28 [(11)] **(10)** "Provisional license", the document issued by the [division]
29 **department** in accordance with the provisions of sections [199.025, RSMo, and
30 660.403 to 660.420] **192.2203 to 192.2227** to an adult day care provider which
31 is not currently meeting the requirements necessary to obtain a license;
- 32 [(12)] **(11)** "Related", any of the following by blood, marriage or adoption:
33 parent, child, grandchild, brother, sister, half-brother, half-sister, stepparent,

34 uncle, aunt, niece, nephew, or first cousin;

35 [(13)] (12) "Staff participant ratio", the number of adult care staff
36 required by the [division] **department** in relation to the number of adults being
37 cared for by such staff.

[660.403.] **192.2203.** 1. It shall be unlawful for any person to establish,
2 maintain, or operate an adult day care program, or to advertise or hold himself
3 out as being able to perform any adult day care service, unless he has obtained
4 the proper license.

5 2. All applications for licenses shall be made on forms provided by the
6 [division] **department** and in the manner prescribed by the [division]
7 **department**. All forms provided shall include a fee schedule.

8 3. The [division] **department** shall conduct an investigation of the adult
9 day care program, and the applicant, for which a license is sought in order to
10 determine if such program is complying with the following:

11 (1) Local fire safety requirements or fire safety requirements of the
12 [division] **department** if there are no local codes;

13 (2) Local or state sanitation requirements;

14 (3) Local building and zoning requirements, where applicable;

15 (4) Staff/adult ratios required by the [division] **department**; and

16 (5) Other applicable provisions of sections [199.025, RSMo, and 660.403
17 to 660.420] **192.2203 to 192.2227** and all applicable rules promulgated pursuant
18 thereto, including but not limited to:

19 (a) The applicant's ability to render adult day care;

20 (b) The proposed plan for providing adult day care;

21 (c) The proposed plan of operation of the adult day care program, so that,
22 in the judgment of the [division] **department**, minimum standards are being met
23 to insure the health and safety of the participants.

24 4. Following completion of its investigation made pursuant to subsection
25 3 of this section and a finding that the applicant for a license has complied with
26 all applicable rules promulgated pursuant to sections [199.025, RSMo, and
27 660.403 to 660.420] **192.2203 to 192.2227** the [division] **department** shall issue
28 a license to such applicant. Such license shall be valid for the period designated
29 by the division, which period shall not exceed two years from the date of issuance,
30 for the premises and persons named in the application.

31 5. Each license issued under sections [199.025, RSMo, and 660.403 to
32 660.420] **192.2203 to 192.2227** shall include the name of the provider, owner and

33 operator; the name of the adult day care program; the location of the adult day
34 care program; the hours of operations; the number and any limitations or the type
35 of participants who may be served; and the period for which such license is valid.

36 6. The [division] **department** may issue a provisional license to an adult
37 day care program that is not currently meeting requirements for a license but
38 which demonstrates the potential capacity to meet full requirements for license;
39 except that, no provisional license shall be issued unless the director is satisfied
40 that the operation of the adult day care program is not detrimental to the health
41 and safety of the participants being served. The provisional license shall be
42 nonrenewable and shall be valid for the period designated by the [division]
43 **department**, which period shall not exceed six months from the date of
44 issuance. Upon issuance of a regular license, a day care program's provisional
45 license shall immediately be null and void.

[660.405.] **192.2206.** 1. The provisions of sections [199.025, RSMo, and
2 660.403 to 660.420] **192.2203 to 192.2227** shall not apply to the following:

3 (1) Any adult day care program operated by a person in which care is
4 offered for no more than two hours per day;

5 (2) Any adult day care program maintained or operated by the federal
6 government except where care is provided through a management contract;

7 (3) Any person who cares solely for persons related to the provider or who
8 has been designated as guardian of that person;

9 (4) Any adult day care program which cares for no more than four persons
10 unrelated to the provider;

11 (5) Any adult day care program licensed by the department of mental
12 health under chapter 630, RSMo, which provides care, treatment and habilitation
13 exclusively to adults who have a primary diagnosis of mental disorder, mental
14 illness, mental retardation or developmental disability as defined;

15 (6) Any adult day care program administered or maintained by a religious
16 not-for-profit organization serving a social or religious function if the adult day
17 care program does not hold itself out as providing the prescription or usage of
18 physical or medical therapeutic activities or as providing or administering
19 medicines or drugs.

20 2. Nothing in this section shall prohibit any person listed in subsection
21 1 of this section from applying for a license or receiving a license if the adult day
22 care program owned or operated by such person conforms to the provisions of
23 sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** and all

24 applicable rules promulgated pursuant thereto.

[660.407.] **192.2209.** 1. The director, or his authorized representative,
2 shall have the right to enter the premises of an applicant for or holder of a license
3 at any time during the hours of operation of a center to determine compliance
4 with provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
5 **192.2227** and applicable rules promulgated pursuant thereto. Entry shall also
6 be granted for investigative purposes involving complaints regarding the
7 operations of an adult day care program. The [division] **department** shall make
8 at least two inspections per year, at least one of which shall be unannounced to
9 the operator or provider. The [division] **department** may make such other
10 inspections, announced or unannounced, as it deems necessary to carry out the
11 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
12 **192.2227.**

13 2. The applicant for or holder of a license shall cooperate with the
14 investigation and inspection by providing access to the adult day care program,
15 records and staff, and by providing access to the adult day care program to
16 determine compliance with the rules promulgated pursuant to sections [199.025,
17 RSMo, and 660.403 to 660.420] **192.2203 to 192.2227.**

18 3. Failure to comply with any lawful request of the [division]
19 **department** in connection with the investigation and inspection is a ground for
20 refusal to issue a license or for the suspension or revocation of a license.

21 4. The [division] **department** may designate to act for it, with full
22 authority of law, any instrumentality of any political subdivision of the state of
23 Missouri deemed by the [division] **department** to be competent to investigate
24 and inspect applicants for or holders of licenses.

[660.409.] **192.2212.** Each application for a license, or the renewal
2 thereof, issued pursuant to sections [199.025, RSMo, and 660.403 to 660.420]
3 **192.2203 to 192.2227** shall be accompanied by a nonrefundable fee in the
4 amount required by the [division] **department.** The fee, to be determined by the
5 director [of the division], shall not exceed one hundred dollars and shall be based
6 on the licensed capacity of the applicant.

[660.411.] **192.2215.** The [division] **department** shall offer technical
2 assistance or consultation to assist applicants for or holders of licenses or
3 provisional licenses in meeting the requirements of sections [199.025, RSMo, and
4 660.403 to 660.420] **192.2203 to 192.2227,** staff qualifications, and other aspects
5 involving the operation of an adult day care program, and to assist in the

6 achievement of programs of excellence related to the provision of adult day care.

[660.414.] **192.2218.** 1. Whenever the [division] **department** is advised
2 or has reason to believe that any person is operating an adult day care program
3 without a license, or provisional license, or that any holder of license, or
4 provisional license is not in compliance with the provisions of sections [199.025,
5 RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, the [division]
6 **department** shall make an investigation and inspection to ascertain the facts.
7 If the [division] **department** is not permitted access to the adult day care
8 program in question, the [division] **department** may apply to the circuit court
9 of the county in which the program is located for an order authorizing entry for
10 inspection. The court shall issue the order if it finds reasonable grounds
11 necessitating the inspection.

12 2. If the [division] **department** finds that the adult day care program is
13 being operated in violation of sections [199.025, RSMo, and 660.403 to 660.420]
14 **192.2203 to 192.2227**, it may seek, among other remedies, injunctive relief
15 against the adult day care program.

[660.416.] **192.2221.** 1. Any person aggrieved by an official action of the
2 [division] **department** either refusing to issue a license or revoking or
3 suspending a license may seek a determination thereon by the administrative
4 hearing commission pursuant to the provisions of section [161.272] **621.045**,
5 RSMo, et seq.; except that, the petition must be filed with the administrative
6 hearing commission within thirty days after the mailing or delivery of notice to
7 the applicant for or holder of such license or certificate. When the notification of
8 the official action is mailed to the applicant for or holder of such a license, there
9 shall be included in the notice a statement of the procedure whereby the
10 applicant for or holder of such license may appeal the decision of the [division]
11 **department** before the administrative hearing commission. It shall not be a
12 condition to such determination that the person aggrieved seek a reconsideration,
13 a rehearing or exhaust any other procedure within the [division] **department**.

14 2. The administrative hearing commission may stay the revocation or
15 suspension of such certificate or license, pending the commission's findings and
16 determination in the cause, upon such conditions as the commission deems
17 necessary and appropriate including the posting of bond or other security; except
18 that, the commission shall not grant a stay or if a stay has already been entered
19 shall set aside its stay, if, upon application of the [division] **department**, the
20 commission finds reason to believe that continued operation of the facility to

21 which the certificate or license in question applies pending the commission's final
22 determination would present an imminent danger to the health, safety or welfare
23 of any person or a substantial probability that death or serious physical harm
24 would result. In any case in which the [division] **department** has refused to
25 issue a certificate or license, the commission shall have no authority to stay or to
26 require the issuance of a license pending final determination by the commission.

27 3. The administrative hearing commission shall make the final decision
28 as to the issuance, suspension, or revocation of a license. Any person aggrieved
29 by a final decision of the administrative hearing commission, including the
30 [division] **department**, may seek judicial review of such decision by filing a
31 petition for review in the court of appeals for the district in which the adult day
32 care program to which the license in question applies is located. Review shall be
33 had in accordance with the provisions of sections [161.337 and 161.338] **621.189**
34 **and 621.193**, RSMo.

[660.418.] **192.2224.** The director [of the division] shall have the
2 authority to promulgate rules pursuant to this section and chapter 536, RSMo,
3 in order to carry out the provisions of sections [199.025, RSMo, and 660.403 to
4 660.420. No rule or portion of a rule promulgated under the authority of section
5 199.025, RSMo, and sections 660.403 to 660.420 shall become effective unless it
6 has been promulgated pursuant to the provisions of section 536.024, RSMo]
7 **192.2203 to 192.2227. Any rule or portion of a rule, as that term is**
8 **defined in section 536.010, RSMo, that is created under the authority**
9 **delegated in sections 192.2203 to 192.2227 shall become effective only**
10 **if it complies with and is subject to all of the provisions of chapter 536,**
11 **RSMo, and, if applicable, section 536.028, RSMo. Sections 192.2203 to**
12 **192.2227 and chapter 536, RSMo, are nonseverable and if any of the**
13 **powers vested with the general assembly pursuant to chapter 536,**
14 **RSMo, to review, to delay the effective date, or to disapprove and annul**
15 **a rule are subsequently held unconstitutional, then the grant of**
16 **rulemaking authority and any rule proposed or adopted after August**
17 **28, 2007, shall be invalid and void.**

[660.420.] **192.2227.** 1. Any person who violates any provision of
2 sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, or who,
3 for himself or for any other person, makes materially false statements in order
4 to obtain a certificate or license, or the renewal thereof, issued pursuant to
5 sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, shall

6 be guilty of a class A misdemeanor.

7 2. Any person who is convicted pursuant to this section shall, in addition
8 to all other penalties provided by law, have any license issued to [him] **such**
9 **person** under sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
10 **192.2227** revoked, and shall not operate, nor hold any license to operate, any
11 adult day care program, or other entity governed by the provisions of sections
12 [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** for a period of
13 three years after such conviction.

[660.620.] **192.2250.** 1. There is hereby established an "Office of
2 Advocacy and Assistance for Senior Citizens" within the office of lieutenant
3 governor.

4 2. The senior citizen advocate shall coordinate activities with the
5 long-term care ombudsman program, as defined in section [660.600] **198.700,**
6 **RSMo,** on complaints made by or on behalf of senior citizens residing in
7 long-term care facilities.

8 3. The senior citizen advocate shall conduct a suitable investigation into
9 any actions complained of unless the senior citizen advocate finds that the
10 complaint pertains to a matter outside the scope of the authority of the senior
11 citizen advocate, the complainant has no substantive or procedural interest which
12 is directly affected by the matter complained about, or the complaint is trivial,
13 frivolous, vexatious or not made in good faith.

14 4. After completing his investigation of a complaint, the senior citizen
15 advocate shall inform the complainant, the agency, official or employee of action
16 recommended by the senior citizen advocate. The senior citizen advocate shall
17 make such reports and recommendations to the affected agencies, the governor
18 and the general assembly as he deems necessary to further the purposes of
19 sections [660.620 and 660.625] **192.2250 and 192.2253.**

20 5. The senior citizen advocate shall, in conjunction with the division of
21 senior services, act as a clearinghouse for information pertaining to and of
22 interest to senior citizens and shall disseminate such information as is necessary
23 to inform senior citizens of their rights and of governmental and nongovernmental
24 services available to them.

[660.625.] **192.2253.** The senior citizen advocate shall maintain
2 confidentiality with respect to all matters, including the identities of the
3 complainants or witnesses coming before the senior citizen advocate unless the
4 complainant consents to the use of his or her name in the course of the

5 investigation.

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

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

5 (2) "Activities of daily living" or "ADL", one or more of the following
6 activities of 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
14 of a facility;

15 (4) "Affiliate":

16 (a) With respect to a partnership, each partner thereof;

17 (b) With respect to a limited partnership, the general partner and each
18 limited partner with an interest of five percent or more in the limited
19 partnership;

20 (c) With respect to a corporation, each person who owns, holds or has the
21 power to vote five percent or more of any class of securities issued by the
22 corporation, and each officer and director;

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

25 (5) "Appropriately trained and qualified individual", an individual who is
26 licensed or registered with the state of Missouri in a health care-related field or
27 an individual with a degree in a health care-related field or an individual with
28 a degree in a health care, social services, or human services field or an individual
29 licensed under chapter 344, RSMo, and who has received facility orientation
30 training under 19 CSR 30-86042(18), and dementia training under section
31 660.050, RSMo, and twenty-four hours of additional training, approved by the
32 department, consisting of definition and assessment of activities of daily living,
33 assessment of cognitive ability, service planning, and interview skills;

34 (6) "Assisted living facility", any premises, other than a residential care
35 facility, intermediate care facility, or skilled nursing facility, that is utilized by

36 its owner, operator, or manager to provide twenty-four-hour care and services and
37 protective oversight to three or more residents who are provided with shelter,
38 board, and who may need and are provided with the following:

39 (a) Assistance with any activities of daily living and any instrumental
40 activities of daily living;

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

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

44 Such term shall not include a facility where all of the residents are related within
45 the fourth degree of consanguinity or affinity to the owner, operator, or manager
46 of the facility;

47 (7) "Community-based assessment", documented basic information and
48 analysis provided by appropriately trained and qualified individuals describing
49 an individual's abilities and needs in activities of daily living, instrumental
50 activities of daily living, vision/hearing, nutrition, social participation and
51 support, and cognitive functioning using an assessment tool approved by the
52 department of health and senior services that is designed for community-based
53 services and that is not the nursing home minimum data set;

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

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

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

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

63 (12) "Health care provider", any person providing health care services or
64 goods to residents and who receives funds in payment for such goods or services
65 under Medicaid;

66 (13) "Instrumental activities of daily living", or "IADL", one or more of the
67 following activities:

68 (a) Preparing meals;

69 (b) Shopping for personal items;

70 (c) Medication management;

71 (d) Managing money;

72 (e) Using the telephone;

73 (f) Housework; and

74 (g) Transportation ability;

75 (14) "Intermediate care facility", any premises, other than a residential
76 care facility, assisted living facility, or skilled nursing facility, which is utilized
77 by its owner, operator, or manager to provide twenty-four-hour accommodation,
78 board, personal care, and basic health and nursing care services under the daily
79 supervision of a licensed nurse and under the direction of a licensed physician to
80 three or more residents dependent for care and supervision and who are not
81 related within the fourth degree of consanguinity or affinity to the owner,
82 operator or manager of the facility;

83 (15) "Manager", any person other than the administrator of a facility who
84 contracts or otherwise agrees with an owner or operator to supervise the general
85 operation of a facility, providing such services as hiring and training personnel,
86 purchasing supplies, keeping financial records, and making reports;

87 (16) "Medicaid", medical assistance under section 208.151, RSMo, et seq.,
88 in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social
89 Security Act (42 U.S.C. 301, et seq.), as amended;

90 (17) "Neglect", the failure to provide, by those responsible for the care,
91 custody, and control of a resident in a facility, the services which are reasonable
92 and necessary to maintain the physical and mental health of the resident, when
93 such failure presents either an imminent danger to the health, safety or welfare
94 of the resident or a substantial probability that death or serious physical harm
95 would result;

96 (18) "Operator", any person licensed or required to be licensed under the
97 provisions of sections 198.003 to 198.096 in order to establish, conduct or
98 maintain a facility;

99 (19) "Owner", any person who owns an interest of five percent or more in:

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

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

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

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

106 "Owner" does not include a holder of a debenture or bond purchased at public
107 issue nor does it include any regulated lender unless the entity or person directly

108 or through a subsidiary operates a facility;

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

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

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

134 (23) "Skilled nursing facility", any premises, other than a residential care
135 facility, an assisted living facility, or an intermediate care facility, which is
136 utilized by its owner, operator or manager to provide for twenty-four-hour
137 accommodation, board and skilled nursing care and treatment services to at least
138 three residents who are not related within the fourth degree of consanguinity or
139 affinity to the owner, operator or manager of the facility. Skilled nursing care
140 and treatment services are those services commonly performed by or under the
141 supervision of a registered professional nurse for individuals requiring
142 twenty-four-hours-a-day care by licensed nursing personnel including acts of
143 observation, care and counsel of the aged, ill, injured or infirm, the

144 administration of medications and treatments as prescribed by a licensed
145 physician or dentist, and other nursing functions requiring substantial specialized
146 judgment and skill;

147 (24) "Social model of care", long-term care services based on the abilities,
148 desires, and functional needs of the individual delivered in a setting that is more
149 home-like than institutional and promotes the dignity, individuality, privacy,
150 independence, and autonomy of the individual. Any facility licensed as a
151 residential care facility II prior to August 28, 2006, shall qualify as being more
152 home-like than institutional with respect to construction and physical plant
153 standards;

154 (25) "Vendor", any person selling goods or services to a health care
155 provider;

156 (26) "Voluntary leave", an off-premise leave initiated by:

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

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

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

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

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

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

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

19 (5) Provide each resident or his designee or guardian with a quarterly

20 accounting of all financial transactions made on behalf of the resident;

21 (6) Within five days of the discharge of a resident, provide the resident,
22 or his designee or guardian, with an up-to-date accounting of the resident's
23 personal funds and return to the resident the balance of his funds and all his
24 personal possessions;

25 (7) Upon the death of a resident who has been a recipient of aid,
26 assistance, care, services, or who has had moneys expended on his behalf by the
27 department of social services, provide the department a complete account of all
28 the resident's personal funds within sixty days from the date of death.

29 The total amount paid to the decedent or expended upon his behalf by the
30 department shall be a debt due the state and recovered from the available funds
31 upon the department's claim on such funds. The department shall make a claim
32 on the funds within sixty days from the date of the accounting of the funds by the
33 facility. The nursing facility shall pay the claim made by the department of social
34 services from the resident's personal funds within sixty days. Where the name
35 and address are reasonably ascertainable, the department of social services shall
36 give notice of the debt due the state to the person whom the recipient had
37 designated to receive the quarterly accounting of all financial transactions made
38 under this section, or the resident's guardian or conservator or the person or
39 persons listed in nursing home records as a responsible party or the fiduciary of
40 the resident's estate. If any funds are available after the department's claim, the
41 remaining provisions of this section shall apply to the balance, unless the funds
42 belonged to a person other than the resident, in which case the funds shall be
43 paid to that person;

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

54 (a) If the unclaimed funds or possessions have a value totaling one
55 hundred and fifty dollars or less, the funds or the proceeds of the sale of the

56 possessions may be deposited in a fund to be used for the benefit of all residents
57 of the facility by providing the residents social or educational activities. The
58 facility shall keep an accounting of the acquisitions and expenditure of these
59 funds; or

60 (b) If the unclaimed funds or possessions have a value greater than one
61 hundred and fifty dollars, the funds or possessions shall be immediately
62 presumed to be abandoned property under sections 447.500 to 447.585, RSMo,
63 and the procedures provided for in those sections shall apply notwithstanding any
64 other provisions of those sections which require a period greater than two years
65 for a presumption of abandonment;

66 (9) Upon ceasing to be the operator of a facility, all funds and property
67 held in trust pursuant to this section shall be transferred to the new operator in
68 accordance with sound accounting principles, and a closeout report signed by both
69 the outgoing operator and the successor operator shall be prepared. The closeout
70 report shall include a list of current balances of all funds held for residents
71 respectively and an inventory of all property held for residents respectively. If
72 the outgoing operator refuses to sign the closeout report, he shall state in writing
73 the specific reasons for his failure to do so, and the successor operator shall
74 complete the report and attach an affidavit stating that the information contained
75 therein is true to the best of his knowledge and belief. Such report shall be
76 retained with all other records and accounts required to be maintained under this
77 section;

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

80 2. Any owner, operator, manager, employee, or affiliate of an owner or
81 operator who receives any personal property or anything else of value from a
82 resident, shall, if the thing received has a value of ten dollars or more, make a
83 written statement giving the date it was received, from whom it was received, and
84 its estimated value. Statements required to be made pursuant to this subsection
85 shall be retained by the operator and shall be made available for inspection by
86 the department, or by the department of mental health when the resident has
87 been placed by that department, and by the resident, and his designee or legal
88 guardian. Any person who fails to make a statement required by this subsection
89 is guilty of a class C misdemeanor.

90 3. No owner, operator, manager, employee, or affiliate of an owner or
91 operator shall in one calendar year receive any personal property or anything else

92 of value from the residents of any facility which have a total estimated value in
93 excess of one hundred dollars.

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

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

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

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

108 8. For each report the division shall attempt to obtain the name and
109 address of the facility, the name of the facility employee, the name of the
110 resident, information regarding the nature of the misappropriation, the name of
111 the complainant, and any other information which might be helpful in an
112 investigation.

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

114 10. If the investigation indicates probable misappropriation of property
115 or funds of a resident, the investigator shall refer the complaint together with his
116 report to the department director or his designee for appropriate action.

117 11. Reports shall be confidential, as provided under section 660.320,
118 RSMo.

119 12. Anyone, except any person participating in or benefiting from the
120 misappropriation of funds, who makes a report pursuant to this section or who
121 testifies in any administrative or judicial proceeding arising from the report shall
122 be immune from any civil or criminal liability for making such a report or for
123 testifying except for liability for perjury, unless such person acted negligently,
124 recklessly, in bad faith, or with malicious purpose.

125 13. Within five working days after a report required to be made under this
126 section is received, the person making the report shall be notified in writing of
127 its receipt and of the initiation of the investigation.

128 14. No person who directs or exercises any authority in a facility shall
 129 evict, harass, dismiss or retaliate against a resident or employee because he or
 130 any member of his family has made a report of any violation or suspected
 131 violation of laws, ordinances or regulations applying to the facility which he has
 132 reasonable cause to believe has been committed or has occurred.

133 15. The department shall maintain the employee disqualification list and
 134 place on the employee disqualification list the names of any persons who have
 135 been finally determined by the department, pursuant to section 660.315, RSMo,
 136 to have misappropriated any property or funds of a resident while employed in
 137 any facility.]

198.532. 1. Complaints filed with the department of health and senior
 2 services against a long-term care facility which allege that harm has occurred or
 3 is likely to occur to a resident or residents of the facility due to actions or the lack
 4 of actions taken by the facility shall be investigated within thirty days of receipt
 5 of such complaints. The purpose of such investigation shall be to ensure the
 6 safety, protection and care of all residents of the facility likely to be affected by
 7 the alleged action or inaction. Such investigation shall be in addition to the
 8 investigation requirements for abuse and neglect reports pursuant to section
 9 [198.070] **192.2150, RSMo.**

10 2. The department shall provide the results of all investigations in
 11 accordance with section [660.320] **192.2150, RSMo.** The department shall
 12 provide the results of such investigation in writing to all parties to the complaint,
 13 and if requested, to any of the facility's residents, or their family members or
 14 guardians. Complaints and written results will be readily available for public
 15 access and review at the department of health and senior services and at the
 16 long-term care facility. Personal information identifying the resident will be
 17 blanked out, except in regard to immediate family, the attorney-in-fact or the
 18 legal guardian of the resident in question. This information will remain readily
 19 available for a period of time determined by the department of health and senior
 20 services.

[660.600.] **198.700.** As used in sections [660.600 to 660.608] **198.700 to**
 2 **198.708,** the following terms mean:

3 (1) "Division", the division of aging of the department of [social] **health**
 4 **and senior** services;

5 (2) "Long-term care facility", any facility licensed pursuant to chapter 198,
 6 RSMo, and long-term care facilities connected with hospitals licensed pursuant

7 to chapter 197, RSMo;

8 (3) "Office", the office of the state ombudsman for long-term care facility
9 residents;

10 (4) "Ombudsman", the state ombudsman for long-term care facility
11 residents;

12 (5) "Regional ombudsman coordinators", designated individuals working
13 for, or under contract with, the area agencies on aging, and who are so designated
14 by the area agency on aging and certified by the ombudsman as meeting the
15 qualifications established by the [division] **department**;

16 (6) "Resident", any person who is receiving care or treatment in a
17 long-term care facility.

[660.603.] **198.703.** 1. There is hereby established within the
2 department of health and senior services the "Office of State Ombudsman for
3 Long-Term Care Facility Residents", for the purpose of helping to assure the
4 adequacy of care received by residents of long-term care facilities and to improve
5 the quality of life experienced by them, in accordance with the federal Older
6 Americans Act, 42 U.S.C. 3001, et seq.

7 2. The office shall be administered by the state ombudsman, who shall
8 devote his or her entire time to the duties of his or her position.

9 3. The office shall establish and implement procedures for receiving,
10 processing, responding to, and resolving complaints made by or on behalf of
11 residents of long-term care facilities relating to action, inaction, or decisions of
12 providers, or their representatives, of long-term care services, of public agencies
13 or of social service agencies, which may adversely affect the health, safety,
14 welfare or rights of such residents.

15 4. The department shall establish and implement procedures for
16 resolution of complaints. The ombudsman or representatives of the office shall
17 have the authority to:

18 (1) Enter any long-term care facility and have access to residents of the
19 facility at a reasonable time and in a reasonable manner. The ombudsman shall
20 have access to review resident records, if given permission by the resident or the
21 resident's legal guardian. Residents of the facility shall have the right to request,
22 deny, or terminate visits with an ombudsman;

23 (2) Make the necessary inquiries and review such information and records
24 as the ombudsman or representative of the office deems necessary to accomplish
25 the objective of verifying these complaints.

26 5. The office shall acknowledge complaints, report its findings, make
27 recommendations, gather and disseminate information and other material, and
28 publicize its existence.

29 6. The ombudsman may recommend to the relevant governmental agency
30 changes in the rules and regulations adopted or proposed by such governmental
31 agency which do or may adversely affect the health, safety, welfare, or civil or
32 human rights of any resident in a facility. The office shall analyze and monitor
33 the development and implementation of federal, state and local laws, regulations
34 and policies with respect to long-term care facilities and services in the state and
35 shall recommend to the department changes in such laws, regulations and
36 policies deemed by the office to be appropriate.

37 7. The office shall promote community contact and involvement with
38 residents of facilities through the use of volunteers and volunteer programs
39 directed by the regional ombudsman coordinators.

40 8. The office shall develop and establish by regulation of the department
41 statewide policies and standards for implementing the activities of the
42 ombudsman program, including the qualifications and the training of regional
43 ombudsman coordinators and ombudsman volunteers.

44 9. The office shall develop and propose programs for use, training and
45 coordination of volunteers in conjunction with the regional ombudsman
46 coordinators and may:

47 (1) Establish and conduct recruitment programs for volunteers;

48 (2) Establish and conduct training seminars, meetings and other programs
49 for volunteers; and

50 (3) Supply personnel, written materials and such other reasonable
51 assistance, including publicizing their activities, as may be deemed necessary.

52 10. The regional ombudsman coordinators and ombudsman volunteers
53 shall have the authority to report instances of abuse and neglect to the
54 ombudsman hotline operated by the department.

55 11. If the regional ombudsman coordinator or volunteer finds that a
56 nursing home administrator is not willing to work with the ombudsman program
57 to resolve complaints, the state ombudsman shall be notified. The department
58 shall establish procedures by rule in accordance with chapter 536, RSMo, for
59 implementation of this subsection.

60 12. The office shall prepare and distribute to each facility written notices
61 which set forth the address and telephone number of the office, a brief

62 explanation of the function of the office, the procedure to follow in filing a
63 complaint and other pertinent information.

64 13. The administrator of each facility shall ensure that such written
65 notice is given to every resident or the resident's guardian upon admission to the
66 facility and to every person already in residence, or to his guardian. The
67 administrator shall also post such written notice in a conspicuous, public place
68 in the facility in the number and manner set forth in the regulations adopted by
69 the department.

70 14. The office shall inform residents, their guardians or their families of
71 their rights and entitlements under state and federal laws and rules and
72 regulations by means of the distribution of educational materials and group
73 meetings.

[660.605.] **198.705.** 1. Any files maintained by the ombudsman program
2 shall be disclosed only at the discretion of the ombudsman having authority over
3 the disposition of such files, except that the identity of any complainant or
4 resident of a long-term care facility shall not be disclosed by such ombudsman
5 unless:

6 (1) Such complainant or resident, or the complainant's or resident's legal
7 representative, consents in writing to such disclosure; or

8 (2) Such disclosure is required by court order.

9 2. Any representative of the office conducting or participating in any
10 examination of a complaint who shall knowingly and willfully disclose to any
11 person other than the office, or those authorized by the office to receive it, the
12 name of any witness examined or any information obtained or given upon such
13 examination, shall be guilty of a class A misdemeanor. However, the ombudsman
14 conducting or participating in any examination of a complaint shall disclose the
15 final result of the examination to the facility with the consent of the resident.

16 3. Any statement or communication made by the office relevant to a
17 complaint received by, proceedings before or activities of the office and any
18 complaint or information made or provided in good faith by any person, shall be
19 absolutely privileged and such person shall be immune from suit.

20 4. The office shall not be required to testify in any court with respect to
21 matters held to be confidential in this section except as the court may deem
22 necessary to enforce the provisions of sections [660.600 to 660.608] **198.700 to**
23 **198.708**, or where otherwise required by court order.

[660.608.] **198.708.** 1. Any regional coordinator or local program staff,

2 whether an employee or an unpaid volunteer, shall be treated as a representative
3 of the office. No representative of the office shall be held liable for good faith
4 performance of his **or her** official duties under the provisions of sections [660.600
5 to 660.608] **198.700 to 198.708** and shall be immune from suit for the good faith
6 performance of such duties. Every representative of the office shall be considered
7 a state employee under section 105.711, RSMo.

8 2. No reprisal or retaliatory action shall be taken against any resident or
9 employee of a long-term care facility for any communication made or information
10 given to the office. Any person who knowingly or willfully violates the provisions
11 of this subsection shall be guilty of a class A misdemeanor. Any person who
12 serves or served on a quality assessment and assurance committee required under
13 42 U.S.C. sec. 1396r(b)(1)(B) and 42 CFR sec. 483.75(r), or as amended, shall be
14 immune from civil liability only for acts done directly as a member of such
15 committee so long as the acts are performed in good faith, without malice and are
16 required by the activities of such committee as defined in 42 CFR sec. 483.75(r).

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

- 3 (1) Supervising their personal care attendant;
- 4 (2) Verifying wages to be paid to the personal care attendant;
- 5 (3) Preparing and submitting time sheets, signed by both the consumer
6 and personal care attendant, to the vendor on a biweekly basis;
- 7 (4) Promptly notifying the department within ten days of any changes in
8 circumstances affecting the personal care assistance services plan or in the
9 consumer's place of residence; and
- 10 (5) Reporting any problems resulting from the quality of services rendered
11 by the personal care attendant to the vendor. If the consumer is unable to resolve
12 any problems resulting from the quality of service rendered by the personal care
13 attendant with the vendor, the consumer shall report the situation to the
14 department.

15 2. Participating vendors shall be responsible for:

- 16 (1) Collecting time sheets and certifying their accuracy;
- 17 (2) The Medicaid reimbursement process, including the filing of claims
18 and reporting data to the department as required by rule;
- 19 (3) Transmitting the individual payment directly to the personal care
20 attendant on behalf of the consumer;
- 21 (4) Monitoring the performance of the personal care assistance services

22 plan.

23 3. No state or federal financial assistance shall be authorized or expended
24 to pay for services provided to a consumer under sections 208.900 to 208.927, if
25 the primary benefit of the services is to the household unit, or is a household task
26 that the members of the consumer's household may reasonably be expected to
27 share or do for one another when they live in the same household, unless such
28 service is above and beyond typical activities household members may reasonably
29 provide for another household member without a disability.

30 4. No state or federal financial assistance shall be authorized or expended
31 to pay for personal care assistance services provided by a personal care attendant
32 [who is listed on any of the background check lists in the family care safety
33 registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is
34 first obtained from the department in accordance with section 660.317, RSMo]
35 **who:**

36 **(1) Is listed on the employee disqualification list maintained by**
37 **the department of health and senior services under section 192.2150,**
38 **RSMo;**

39 **(2) Is registered as a sexual offender under section 589.400**
40 **RSMo; or**

41 **(3) Has a disqualifying criminal history under section 192.2178,**
42 **RSMo, unless a good cause waiver is first obtained from the department**
43 **in accordance with section 192.2178, RSMo.**

208.912. 1. [When any adult day care worker; chiropractor, Christian
2 Science practitioner, coroner, dentist, embalmer, employee of the departments of
3 social services, mental health, or health and senior services; employee of a local
4 area agency on aging or an organized area agency on aging program; funeral
5 director; home health agency or home health agency employee; hospital and clinic
6 personnel engaged in examination, care, or treatment of persons; in-home services
7 owner, provider, operator, or employee; law enforcement officer; long-term care
8 facility administrator or employee; medical examiner; medical resident or intern;
9 mental health professional; minister; nurse; nurse practitioner; optometrist; other
10 health practitioner; peace officer; pharmacist; physical therapist; physician;
11 physician's assistant; podiatrist; probation or parole officer; psychologist; vendor
12 as defined in section 208.900; personal care attendant; or social worker has
13 reasonable cause to believe that a consumer has been abused or neglected as
14 defined in section 660.250, RSMo, as a result of the delivery of or failure to

15 deliver personal care assistance services, he or she shall immediately report or
16 cause a report to be made to the department. If the report is made by a physician
17 of the consumer, the department shall maintain contact with the physician
18 regarding the progress of the investigation.

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

24 [3.] 2. If requested, local area agencies on aging shall provide volunteer
25 training to those persons listed in subsection 1 of this section regarding the
26 detection and reporting of abuse and neglect under this section.

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

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

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

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

49 8. Reports shall be confidential, as provided under section 660.320, RSMo.

50 9. Anyone, except any person who has abused or neglected a consumer,

51 who makes a report pursuant to this section or who testifies in any
52 administrative or judicial proceeding arising from the report shall be immune
53 from any civil or criminal liability for making such a report or for testifying,
54 except for liability for perjury, unless such person acted negligently, recklessly,
55 in bad faith, or with malicious purpose.

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

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

65 12. The department shall place on the employee disqualification list
66 established in section 660.315, RSMo, the names of any persons who have been
67 finally determined by the department to have recklessly, knowingly or purposely
68 abused or neglected a consumer while employed by a vendor, or employed by a
69 consumer as a personal care attendant.

70 13. The department shall provide the list maintained pursuant to section
71 660.315, RSMo, to vendors as defined in section 208.900.

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

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited
2 as the "Family Care Safety Act".

3 2. As used in sections 210.900 to 210.936, the following terms shall mean:

4 (1) "Child-care provider", any licensed or license-exempt child-care home,
5 any licensed or license-exempt child-care center, **in-home provider under**
6 **contract with the department of health and senior services** child-placing
7 agency, residential care facility for children, group home, foster family group
8 home, foster family home, employment agency that refers a child-care worker to

9 parents or guardians as defined in section 289.005, RSMo. The term "child-care
10 provider" does not include summer camps or voluntary associations designed
11 primarily for recreational or educational purposes;

12 (2) "Child-care worker", any person who is employed by a child-care
13 provider, or receives state or federal funds, either by direct payment,
14 reimbursement or voucher payment, as remuneration for child-care services;

15 (3) "Department", the department of health and senior services;

16 (4) "Elder-care provider", any operator licensed pursuant to chapter 198,
17 RSMo, or any person, corporation, or association who provides in-home services
18 under contract with the division of aging, or any employer of nurses or nursing
19 assistants of home health agencies licensed pursuant to sections 197.400 to
20 197.477, RSMo, or any nursing assistants employed by a hospice pursuant to
21 sections 197.250 to 197.280, RSMo, or that portion of a hospital for which
22 subdivision (3) of subsection 1 of section 198.012, RSMo, applies;

23 (5) "Elder-care worker", any person who is employed by an elder-care
24 provider, or who receives state or federal funds, either by direct payment,
25 reimbursement or voucher payment, as remuneration for elder-care services;

26 (6) "Patrol", the Missouri state highway patrol;

27 (7) "Employer", any child-care provider, elder-care provider, or
28 personal-care provider as defined in this section;

29 (8) "Personal-care attendant" or "personal-care worker", a person who
30 performs routine services or supports necessary for a person with a physical or
31 mental disability to enter and maintain employment or to live independently;

32 (9) "Personal-care provider", any person, corporation, or association who
33 provides personal-care services or supports under contract with the department
34 of mental health, the division of aging, the department of health and senior
35 services or the department of elementary and secondary education;

36 (10) "Related child care", child care provided only to a child or children
37 by such child's or children's grandparents, great-grandparents, aunts or uncles,
38 or siblings living in a residence separate from the child or children;

39 (11) "Related elder care", care provided only to an elder by an adult child,
40 a spouse, a grandchild, a great-grandchild or a sibling of such elder.

210.906. 1. Every child-care worker or elder-care worker hired on or after
2 January 1, 2001, or personal-care worker hired on or after January 1, 2002, shall
3 complete a registration form provided by the department. The department shall
4 make such forms available no later than January 1, 2001, and may, by rule,

5 determine the specific content of such form, but every form shall:

6 (1) Request the valid Social Security number of the applicant;

7 (2) Include information on the person's right to appeal the information
8 contained in the registry pursuant to section 210.912;

9 (3) Contain the signed consent of the applicant for the background checks
10 required pursuant to this section; and

11 (4) Contain the signed consent for the release of information contained in
12 the background check for employment purposes only.

13 2. Every child-care worker or elder-care worker hired on or after January
14 1, 2001, and every personal-care worker hired on or after January 1, 2002, shall
15 complete a registration form within fifteen days of the beginning of such person's
16 employment. Any person employed as a child-care, elder-care or personal-care
17 worker who fails to submit a completed registration form to the department of
18 health and senior services as required by sections 210.900 to 210.936 without
19 good cause, as determined by the department, is guilty of a class B misdemeanor.

20 3. The costs of the criminal background check may be paid by the
21 individual applicant, or by the provider if the applicant is so employed, or for
22 those applicants receiving public assistance, by the state through the terms of the
23 self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to
24 the patrol for the costs of the criminal background check shall be deposited to the
25 credit of the criminal record system fund as required by section 43.530, RSMo.

26 4. Any person licensed pursuant to sections 210.481 to 210.565 shall be
27 automatically registered in the family care safety registry at no additional cost
28 other than the costs required pursuant to sections 210.481 to 210.565.

29 5. Any person not required to register pursuant to the provisions of
30 sections 210.900 to 210.936 may also be included in the registry if such person
31 voluntarily applies to the department for registration and meets the requirements
32 of this section and section 210.909, including submitting to the background checks
33 in subsection 1 of section 210.909.

34 6. The provisions of sections 210.900 to 210.936 shall not extend to related
35 child care, related elder care or related personal care **workers or attendants**
36 **who do not receive state or federal moneys for services.**

559.100. 1. The circuit courts of this state shall have power, herein
2 provided, to place on probation or to parole persons convicted of any offense over
3 which they have jurisdiction, except as otherwise provided in sections 195.275 to
4 195.296, RSMo, section 558.018, RSMo, section 559.115, [section] **sections**

5 565.020, **565.180, 565.182 and 565.200**, RSMo, sections 566.030, 566.060,
6 566.067, 566.151, and 566.213, RSMo, **section 570.145, RSMo**, section 571.015,
7 RSMo, and subsection 3 of section 589.425, RSMo.

8 2. The circuit court shall have the power to revoke the probation or parole
9 previously granted and commit the person to the department of corrections. The
10 circuit court shall determine any conditions of probation or parole for the
11 defendant that it deems necessary to ensure the successful completion of the
12 probation or parole term, including the extension of any term of supervision for
13 any person while on probation or parole. The circuit court may require that the
14 defendant pay restitution for his crime. The probation or parole may be revoked
15 for failure to pay restitution or for failure to conform his behavior to the
16 conditions imposed by the circuit court. The circuit court may, in its discretion,
17 credit any period of probation or parole as time served on a sentence.

 565.180. 1. A person commits the crime of elder abuse in the first degree
2 if he attempts to kill, knowingly causes or attempts to cause serious physical
3 injury, as defined in section 565.002, to any person sixty years of age or older or
4 an eligible adult as defined in section [660.250] **192.2100**, RSMo.

5 2. Elder abuse in the first degree is a class A felony.

6 **3. No court may suspend the imposition or execution of sentence**
7 **or impose a fine in lieu of a term of imprisonment when a person**
8 **pleads guilty to or is found guilty of elder abuse in the first degree.**

 565.182. 1. A person commits the crime of elder abuse in the second
2 degree if he:

3 (1) Knowingly causes, attempts to cause physical injury to any person
4 sixty years of age or older or an eligible adult, as defined in section [660.250]
5 **192.2100**, RSMo, by means of a deadly weapon or dangerous instrument; or

6 (2) Recklessly [and purposely] causes serious physical injury, as defined
7 in section 565.002, to a person sixty years of age or older or an eligible adult as
8 defined in section [660.250] **192.2100**, RSMo.

9 2. Elder abuse in the second degree is a class B felony.

10 **3. No court may suspend the imposition or execution of sentence**
11 **or impose a fine in lieu of a term of imprisonment when a person**
12 **pleads guilty to or is found guilty under subdivision (1) of subsection**
13 **1 of this section.**

 565.184. 1. A person commits the crime of elder abuse in the third degree
2 if he:

3 (1) Knowingly causes or attempts to cause physical contact with any
4 person sixty years of age or older or an eligible adult as defined in section
5 [660.250] **192.2100**, RSMo, knowing the other person will regard the contact as
6 harmful or provocative; or

7 (2) Purposely engages in conduct involving more than one incident that
8 causes grave emotional distress to a person sixty years of age or older or an
9 eligible adult, as defined in section [660.250] **192.2100**, RSMo. The course of
10 conduct shall be such as would cause a reasonable person age sixty years of age
11 or older or an eligible adult, as defined in section [660.250] **192.2100**, RSMo, to
12 suffer substantial emotional distress; or

13 (3) Purposely or knowingly places a person sixty years of age or older or
14 an eligible adult, as defined in section [660.250] **192.2100**, RSMo, in
15 apprehension of immediate physical injury; or

16 (4) Intentionally fails to provide care, goods or services to a person sixty
17 years of age or older or an eligible adult, as defined in section [660.250]
18 **192.2100**, RSMo. The cause of the conduct shall be such as would cause a
19 reasonable person age sixty or older or an eligible adult, as defined in section
20 [660.250] **192.2100**, RSMo, to suffer physical or emotional distress; or

21 (5) Knowingly acts or knowingly fails to act in a manner which results in
22 a grave risk to the life, body or health of a person sixty years of age or older or
23 an eligible adult, as defined in section [660.250] **192.2100**, RSMo.

24 2. Elder abuse in the third degree is a class [A misdemeanor] **D felony**.

565.188. 1. When any adult day care worker; chiropractor; Christian
2 Science practitioner; coroner; dentist; embalmer; employee of the departments of
3 social services, mental health, or health and senior services; employee of a local
4 area agency on aging or an organized area agency on aging program; funeral
5 director; home health agency or home health agency employee; hospital and clinic
6 personnel engaged in examination, care, or treatment of persons; in-home services
7 owner, provider, operator, or employee; law enforcement officer; long-term care
8 facility administrator or employee; medical examiner; medical resident or intern;
9 mental health professional; minister; nurse; nurse practitioner; optometrist; other
10 health practitioner; peace officer; pharmacist; physical therapist; physician;
11 physician's assistant; podiatrist; probation or parole officer; psychologist; social
12 worker; or other person with responsibility for the care of a person sixty years of
13 age or older has reasonable cause to suspect that such a person has been
14 subjected to abuse or neglect, **or financial exploitation**, or observes such a

15 person being subjected to conditions or circumstances which would reasonably
16 result in abuse or neglect, **or financial exploitation**, he or she shall
17 immediately report or cause a report to be made to the department in accordance
18 with the provisions of sections [660.250 to 660.295] **192.2100 to 192.2130**,
19 RSMo. Any other person who becomes aware of circumstances which may
20 reasonably be expected to be the result of or result in abuse or neglect, **or**
21 **financial exploitation**, may report to the department.

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

24 3. Any person who purposely files a false report of elder abuse or neglect
25 **or financial exploitation of the elderly** is guilty of a class A misdemeanor.

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

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

565.200. 1. Any owner or employee of a skilled nursing facility, as defined
2 in section 198.006, RSMo, or an Alzheimer's special unit or program, as defined
3 in section 198.505, RSMo, who:

4 (1) Has sexual contact, as defined in section 566.010, RSMo, with a
5 resident is guilty of a class [B] **A** misdemeanor. Any person who commits a
6 second or subsequent violation of this subdivision is guilty of a class [A
7 misdemeanor] **D felony**; or

8 (2) Has sexual intercourse or deviate sexual intercourse, as defined in
9 section 566.010, RSMo, with a resident is guilty of a class [A misdemeanor] **C**
10 **felony**. Any person who commits a second or subsequent violation of this
11 subdivision is guilty of a class [D] **B** felony. **No court may suspend the**
12 **imposition or execution of sentence or impose a fine in lieu of a term**
13 **of imprisonment when a person pleads guilty to or is found guilty of**
14 **committing a second or subsequent violation of this subdivision.**

15 2. The provisions of this section shall not apply to an owner or employee
16 of a skilled nursing facility or Alzheimer's special unit or program who engages
17 in sexual conduct, as defined in section 566.010, RSMo, with a resident to whom
18 the owner or employee is married.

19 3. Consent of the victim is not a defense to a prosecution pursuant to this
20 section.

**565.320. 1. As used in this section the following terms shall
2 mean:**

3 **(1) "Crime of violence", any crime which involved the threat or
4 use of physical force against an elderly person;**

5 **(2) "Elderly", a person sixty years of age or older.**

6 **2. Notwithstanding any other provision of law no court shall
7 sentence a person who has pled guilty or nolo contendere to or has
8 been found guilty of a crime of violence against the elderly to a term
9 of imprisonment of less than thirty consecutive days or to pay a fine in
10 lieu of a term of imprisonment, nor shall such person be eligible for
11 parole or probation until he or she has served a minimum of thirty
12 consecutive days of imprisonment.**

570.145. 1. A person commits the crime of financial exploitation of an
2 elderly or disabled person if such person knowingly and by deception,
3 intimidation, or force obtains control over the elderly or disabled person's
4 property with the intent to permanently deprive the elderly or disabled person
5 of the use, benefit or possession of his or her property thereby benefiting such
6 person or detrimentally affecting the elderly or disabled person. Financial
7 exploitation of an elderly or disabled person is a class A misdemeanor if the value
8 of the property is less than fifty dollars, a class D felony if the value of the
9 property is fifty dollars but less than five hundred dollars, a class C felony if the
10 value of the property is five hundred dollars but less than one thousand dollars,
11 a class B felony if the value of the property is one thousand dollars [but less than
12 fifty thousand dollars, and a class A felony if the value of the property is fifty
13 thousand dollars] or more. **No court may suspend the imposition or
14 execution of sentence or impose a fine in lieu of a term of
15 imprisonment when a person pleads guilty to or is found guilty of a
16 violation of this section when punishable as a class B felony.**

17 2. For purposes of this section, the following terms mean:

18 (1) "Deception", a misrepresentation or concealment of material fact
19 relating to the terms of a contract or agreement entered into with the elderly or
20 disabled person or to the existing or preexisting condition of any of the property
21 involved in such contract or agreement, or the use or employment of any
22 misrepresentation, false pretense or false promise in order to induce, encourage

23 or solicit the elderly or disabled person to enter into a contract or
24 agreement. Deception includes:

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

27 (b) Failure to correct a false impression which the offender previously has
28 created or confirmed; or

29 (c) Preventing another person from acquiring information pertinent to the
30 disposition of the property involved; or

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

35 (e) Promising performance which the offender does not intend to perform
36 or knows will not be performed. Failure to perform standing alone is not
37 sufficient evidence to prove that the offender did not intend to perform;

38 (2) "Disabled person", a person with a mental, physical, or developmental
39 disability that substantially impairs the person's ability to provide adequately for
40 the person's care or protection;

41 (3) "Elderly person", a person sixty years of age or older;

42 (4) "Intimidation", a threat of physical or emotional harm to an elderly or
43 disabled person, or the communication to an elderly or disabled person that he
44 or she will be deprived of food and nutrition, shelter, prescribed medication, or
45 medical care and treatment.

46 3. Nothing in this section shall be construed to limit the remedies
47 available to the victim pursuant to any state law relating to domestic violence.

48 4. Nothing in this section shall be construed to impose criminal liability
49 on a person who has made a good faith effort to assist the elderly or disabled
50 person in the management of his or her property, but through no fault of his or
51 her own has been unable to provide such assistance.

52 5. Nothing in this section shall limit the ability to engage in bona fide
53 estate planning, to transfer property and to otherwise seek to reduce estate and
54 inheritance taxes; provided that such actions do not adversely impact the
55 standard of living to which the elderly or disabled person has become accustomed
56 at the time of such actions.

57 6. It shall not be a defense to financial exploitation of an elderly or
58 disabled person that the accused reasonably believed that the victim was not an

59 elderly or disabled person.

660.010. 1. There is hereby created a "Department of Social Services" in
2 charge of a director appointed by the governor, by and with the advice and
3 consent of the senate. All the powers, duties and functions of the director of the
4 department of public health and welfare, chapters 191 and 192, RSMo and others,
5 not previously reassigned by executive reorganization plan number 2 of 1973 as
6 submitted by the governor under chapter 26, RSMo, except those assigned to the
7 department of mental health, are transferred by type I transfer to the director of
8 the department of social services and the office of the director, department of
9 public health and welfare is abolished. The department of public health and
10 welfare is abolished. All employees of the department of social services shall be
11 covered by the provisions of chapter 36, RSMo, except the director of the
12 department and his secretary, all division directors and their secretaries, and no
13 more than three additional positions in each division which may be designated
14 by the division director.

15 2. It is the intent of the general assembly in establishing the department
16 of social services, as provided herein, to authorize the director of the department
17 to coordinate the state's programs devoted to those unable to provide for
18 themselves and for the rehabilitation of victims of social disadvantage. The
19 director shall use the resources provided to the department to provide
20 comprehensive programs and leadership striking at the roots of dependency,
21 disability and abuse of society's rules with the purpose of improving service and
22 economical operations. The department is directed to take all steps possible to
23 consolidate and coordinate the field operations of the department to maximize
24 service to the citizens of the state.

25 3. All the powers, duties and functions of the division of welfare, chapters
26 205, 207, 208, 209, and 210, RSMo, and others, are transferred by type I transfer
27 to the "Division of Family Services" which is hereby created in the department of
28 social services. The director of the division shall be appointed by the director of
29 the department. All references to the division of welfare shall hereafter be
30 construed to mean the division of family services of the department of social
31 services.

32 4. [All the powers, duties and functions of the board of nursing home
33 administrators, chapter 344, RSMo, are transferred by type I transfer to the
34 department of social services. The public members of the board shall be
35 appointed by the director of the department.

36 5.] The state's responsibility under public law 452 of the eighty-eighth
37 Congress and others, pertaining to the Office of Economic Opportunity, is
38 transferred by type I transfer to the department of social services.

39 [6.] 5. The state's responsibility under public law 73, Older Americans
40 Act of 1965, of the eighty-ninth Congress is transferred by type I transfer to the
41 department of social services.

42 [7.] 6. All the powers, duties and functions vested by law in the curators
43 of the University of Missouri relating to crippled children's services, chapter 201,
44 RSMo, are transferred by type I transfer to the department of social services.

45 [8.] 7. All the powers, duties and functions vested in the state board of
46 training schools, chapter 219, RSMo, and others, are transferred by type I
47 transfer to the "Division of Youth Services" hereby authorized in the department
48 of social services headed by a director appointed by the director of the
49 department. The state board of training schools shall be reconstituted as an
50 advisory board on youth services, appointed by the director of the
51 department. The advisory board shall visit each facility of the division as often
52 as possible, shall file a written report with the director of the department and the
53 governor on conditions they observed relating to the care and rehabilitative
54 efforts in behalf of children assigned to the facility, the security of the facility and
55 any other matters pertinent in their judgment. Copies of these reports shall be
56 filed with the legislative library. Members of the advisory board shall receive
57 reimbursement for their expenses and twenty-five dollars a day for each day they
58 engage in official business relating to their duties. The members of the board
59 shall be provided with identification means by the director of the division
60 permitting immediate access to all facilities enabling them to make unannounced
61 entrance to facilities they wish to inspect.

 [197.500. 1. The department shall maintain an employee
2 disqualification list and place on the employee disqualification list
3 the names of any persons who are or who have been employed by
4 any entity licensed pursuant to this chapter and who have been
5 finally determined by the department pursuant to section 660.315,
6 RSMo, to have knowingly or recklessly abused or neglected a
7 patient. For the purpose of this section, "abuse" and "neglect" shall
8 have the same meanings as such terms are defined in section
9 198.006, RSMo. For purposes of this section only, "knowingly" and
10 "recklessly" shall have the meanings that are ascribed to them in

11 this section. A person acts "knowingly" with respect to the person's
12 conduct when a reasonable person should be aware of the result
13 caused by his or her conduct. A person acts "recklessly" when the
14 person consciously disregards a substantial and unjustifiable risk
15 that the person's conduct will result in serious physical injury and
16 such disregard constitutes a gross deviation from the standard of
17 care that a reasonable person would exercise in the situation.

18 2. The department shall compile and maintain an employee
19 disqualification list in the same manner as the employee
20 disqualification list compiled and maintained by the department
21 pursuant to section 660.315, RSMo.]

[208.915. 1. Any person having reasonable cause to believe
2 that a misappropriation of a consumer's property or funds, or the
3 falsification of any documents verifying personal care assistance
4 services delivery to the consumer, has occurred may report such
5 information to the department.

6 2. For each report the department shall attempt to obtain
7 the name and address of the vendor, the personal care attendant,
8 the personal care assistance services consumer, information
9 regarding the nature of the misappropriation or falsification, the
10 name of the complainant, and any other information which might
11 be helpful in an investigation.

12 3. Any personal care assistance services vendor, or personal
13 care attendant who puts to his or her own use or the use of the
14 personal care assistance services vendor or otherwise diverts from
15 the personal care assistance services consumer's use any personal
16 property or funds of the consumer, or falsifies any documents for
17 service delivery, is guilty of a class A misdemeanor.

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

22 5. If the investigation indicates probable misappropriation
23 of property or funds, or falsification of any documents for service
24 delivery of a personal care assistance services consumer, the
25 investigator shall refer the complaint together with the

26 investigator's report to the department director or the director's
27 designee for appropriate action.

28 6. Reports shall be confidential, as provided under section
29 660.320, RSMo.

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

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

41 9. No person who directs or exercises any authority in a
42 personal care assistance services vendor agency shall harass,
43 dismiss or retaliate against a personal care assistance services
44 consumer or a personal care attendant because he or she or any
45 member of his or her family has made a report of any violation or
46 suspected violation of laws, ordinances or regulations applying to
47 the personal care assistance services vendor or any personal care
48 attendant which he or she has reasonable cause to believe has been
49 committed or has occurred.

50 10. The department shall maintain the employee
51 disqualification list and place on the employee disqualification list
52 the names of any personal care attendants who are or have been
53 employed by a personal care assistance services consumer, and the
54 names of any persons who are or have been employed by a vendor
55 as defined in subdivision (10) of section 208.900, and who have
56 been finally determined by the department under section 660.315,
57 RSMo, to have misappropriated any property or funds, or falsified
58 any documents for service delivery to a personal care assistance
59 services consumer and who came to be known to the consumer,
60 directly or indirectly by virtue of the consumer's participation in
61 the personal care assistance services program.]

1 [210.933. For any elder-care worker listed in the registry or
2 who has submitted the registration form as required by sections
3 210.900 to 210.936, an elder-care provider may access the registry
4 in lieu of the requirements established pursuant to section 660.315,
5 RSMo, or to subsections 3, 4 and 5 of section 660.317, RSMo.]

6 [660.305. 1. Any person having reasonable cause to believe
7 that a misappropriation of an in-home services client's property or
8 funds, or the falsification of any documents verifying service
9 delivery to the in-home services client has occurred, may report
10 such information to the department.

11 2. For each report the department shall attempt to obtain
12 the names and addresses of the in-home services provider agency,
13 the in-home services employee, the in-home services client,
14 information regarding the nature of the misappropriation or
15 falsification, the name of the complainant, and any other
16 information which might be helpful in an investigation.

17 3. Any in-home services provider agency or in-home services
18 employee who puts to his or her own use or the use of the in-home
19 services provider agency or otherwise diverts from the in-home
20 services client's use any personal property or funds of the in-home
21 services client, or falsifies any documents for service delivery, is
22 guilty of a class A misdemeanor.

23 4. Upon receipt of a report, the department shall
24 immediately initiate an investigation and report information
25 gained from such investigation to appropriate law enforcement
26 authorities.

27 5. If the investigation indicates probable misappropriation
28 of property or funds, or falsification of any documents for service
29 delivery of an in-home services client, the investigator shall refer
30 the complaint together with the investigator's report to the
31 department director or the director's designee for appropriate
action.

6. Reports shall be confidential, as provided under section
660.320.

7. Anyone, except any person participating in or benefiting
from the misappropriation of funds, who makes a report pursuant

32 to this section or who testifies in any administrative or judicial
33 proceeding arising from the report shall be immune from any civil
34 or criminal liability for making such a report or for testifying
35 except for liability for perjury, unless such person acted
36 negligently, recklessly, in bad faith, or with malicious purpose.

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

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

49 10. The department shall maintain the employee
50 disqualification list and place on the employee disqualification list
51 the names of any persons who are or have been employed by an
52 in-home service provider agency and who have been finally
53 determined by the department to, pursuant to section 660.315,
54 have misappropriated any property or funds, or falsified any
55 documents for service delivery of an in-home services client and
56 who came to be known to the person, directly, or indirectly while
57 employed by an in-home services provider agency.]

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

7 (1) The complainant, resident 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
10 in order to prevent further abuse, neglect, misappropriation of

11 property or funds, or falsification of any documents verifying
12 service delivery to an in-home services client;

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

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

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

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

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

2 [660.512. No rule or portion of a rule promulgated under
3 the authority of chapter 210, RSMo, shall become effective unless
4 it has been promulgated pursuant to the provisions of section
536.024, RSMo.]

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