

FIRST REGULAR SESSION

HOUSE BILL NO. 349

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOSMER, BAKER, BRITT, SELBY, BRAY, KENNEDY,
BOUCHER, KELLY (27), McKENNA, CRAWFORD, JOHNSON (61), WILLIAMS, RELFORD,
CAMPBELL, REYNOLDS (Co-sponsors), SKAGGS, JOLLY, BARNETT AND CIERPIOT.

Read 1st time January 11, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0027L.01I

AN ACT

To repeal sections 191.900, 191.910, 198.012, 198.026, 198.032, 198.070, 198.090, 198.526, 198.532, 208.010, 208.151, 208.152, 210.903, 210.909, 210.915, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.055, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo 2000, and to enact in lieu thereof forty new sections relating to protection of the elderly, with penalty provisions and an expiration date for a certain section, with an emergency clause.

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

Section A. Sections 191.900, 191.910, 198.012, 198.026, 198.032, 198.070, 198.090, 198.526, 198.532, 208.010, 208.151, 208.152, 210.903, 210.909, 210.915, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.055, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo 2000, are repealed and forty new sections enacted in lieu thereof, to be known as sections 187.010, 187.020, 187.024, 187.028, 187.030, 187.034, 187.050, 187.080, 187.084, 187.087, 187.100, 187.102, 191.900, 191.910, 198.012, 198.026, 198.030, 198.032, 198.068, 198.090, 198.526, 198.532, 208.010, 208.151, 208.152, 210.903, 210.909, 210.915, 210.933, 210.936, 344.050, 660.030, 660.050, 660.051, 660.055, 660.071, 660.083, 660.252, 660.401 and 1, to read as follows:

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

- (1) "Abuse", the infliction of physical, sexual or emotional injury or harm;**
- (2) "Department", the Missouri department of social services;**

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

5 (3) "Facility", any residential care facility I, residential care facility II, immediate
6 care facility or skilled nursing facility;

7 (4) "Intermediate care facility", any premises, other than a residential care facility
8 I, residential care facility II or skilled nursing facility, which is utilized by its owner,
9 operator or manager to provide twenty-four hour accommodation, board, personal care,
10 and basic health and nursing care services under the daily supervision of a licensed nurse
11 and under the direction of a licensed physician to three or more residents dependent for
12 care and supervision and who are not related within the fourth degree of consanguinity or
13 affinity to the owner, operator or manager of the facility;

14 (5) "Neglect", the failure to provide, by those responsible for the care, custody and
15 control of a person, the services which are reasonable and necessary to maintain the
16 physical and mental health of such person, when such failure presents either an imminent
17 danger to the health, safety or welfare of the person or a substantial probability that death
18 or serious physical harm would result;

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

23 (7) "Residential care facility I", any premises, other than a residential care facility
24 II, intermediate care facility or skilled nursing facility, which is utilized by its owner,
25 operator or manager to provide twenty-four hour care to three or more residents, who are
26 not related within the fourth degree of consanguinity or affinity to the owner, operator or
27 manager of the facility and who need or are provided with shelter, board and with
28 protective oversight, which may include storage and distribution or administration of
29 medications and care during short-term illness or recuperation;

30 (8) "Residential care facility II", any premises, other than a residential care facility
31 I, an intermediate care facility or a skilled nursing facility, which is utilized by its owner,
32 operator or manager to provide twenty-four hour accommodation, board and care to three
33 or more residents who are not related within the fourth degree of consanguinity or affinity
34 to the owner, operator, or manager of the facility and who need or are provided with
35 supervision of diets, assistance in personal care, storage and distribution or administration
36 of medications, supervision of health care under the direction of a licensed physician and
37 protective oversight, including care during short-term illness or recuperation;

38 (9) "Skilled nursing facility", any premises, other than a residential care facility
39 I, a residential care facility II or an intermediate care facility, which is utilized by its
40 owner, operator or manager to provide for twenty-four hour accommodation, board and

41 skilled nursing care and treatment services to at least three residents who are not related
42 within the fourth degree of consanguinity or affinity to the owner, operator or manager of
43 the facility. Skilled nursing care and treatment services are those services commonly
44 performed by or under the supervision of a registered professional nurse for individuals
45 requiring twenty-four hours a day care by licensed nursing personnel including acts of
46 observation, care and counsel of the aged, ill, injured or infirm, the administration of
47 medications and treatments as prescribed by a licensed physician or dentist, and other
48 nursing functions requiring substantial specialized judgment and skill.

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

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

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

21 4. Anyone, except any person who has abused or neglected a resident in a long-term
22 care facility, an individual residing in their home or residence or an in-home services client,
23 who makes a report pursuant to this section or who testifies in any administrative or
24 judicial proceeding arising from the report shall be immune from any civil or criminal
25 liability for making such a report or for testifying except for liability for perjury, unless
26 such person acted in bad faith or with malicious purpose. It is a crime pursuant to section
27 187.030 for any person to purposely file a false report of elder abuse or neglect.

28 5. Every person who has been previously convicted of or pled guilty to making a

29 false report to the department and who is subsequently convicted of making a false report
30 pursuant to subsection 3 of this section is guilty of a class D felony.

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

187.024. 1. If a report made pursuant to section 187.020 involves a resident of a
2 long-term care facility, the report shall contain the name and address of the facility, the
3 name of the resident, information regarding the nature of the abuse or neglect, the name
4 of the complainant and any other information which might be helpful in an investigation.

5 2. Upon receipt of a report pursuant to section 187.022 involving a resident of a
6 long-term care facility, the department shall initiate an investigation within twenty-four
7 hours and, as soon as possible during the course of the investigation, shall notify the
8 resident's next of kin or responsible party of the report and the investigation and further
9 notify them whether the report was substantiated or unsubstantiated unless such resident's
10 next of kin is the alleged perpetrator of the abuse or neglect. For reports involving
11 imminent harm, the division shall initiate an immediate investigation. As provided in
12 section 187.030, suspected reports of elder abuse shall be promptly reported by the
13 department to the appropriate law enforcement agency and prosecutor.

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

25 4. Reports shall be confidential, as provided in section 187.087, provided that:

26 (1) The information in subsections 1 and 3 of this section shall be reported to any
27 immediate family member of, any person with durable power of attorney for or any person
28 with legal guardianship for the resident who is the subject of the complaint and
29 investigation; and

30 (2) Such information shall not be reported to any person pursuant to subdivision
31 (1) of this subsection if such person is the alleged perpetrator of the abuse or neglect.

32 **5. Within five working days after a report required to be made pursuant to this**
33 **section is received, the person making the report shall be notified in writing of its receipt**
34 **and of the initiation of the investigation.**

35 **6. No person who directs or exercises any authority in a facility shall evict, harass,**
36 **dismiss or retaliate against a resident or employee because such resident or employee or**
37 **any member of such resident's or employee's family has made a report of any violation or**
38 **suspected violation of laws, ordinances or regulations applying to the facility which the**
39 **resident, the resident's family or an employee has reasonable cause to believe has been**
40 **committed or has occurred. Through the existing division of aging information and**
41 **referral telephone contact line, residents, their families and employees of a facility shall be**
42 **able to obtain information about their rights, protections and options in cases of eviction,**
43 **harassment, dismissal or retaliation due to a report being made pursuant to this section.**

44 **7. Any person who knowingly abuses or neglects a resident of a facility shall be**
45 **guilty of a class D felony.**

46 **8. The department shall maintain the employee disqualification list and place on**
47 **the employee disqualification list the names of any persons who have been finally**
48 **determined by the department pursuant to section 187.081 to have recklessly, knowingly**
49 **or purposely abused or neglected a resident while employed in any facility.**

50 **9. The timely self-reporting of incidents to the central registry by a facility shall**
51 **continue to be investigated in accordance with department policy, and shall not be counted**
52 **or reported by the department as a hot-line call but rather a self-reported incident. If the**
53 **self-reported incident results in a regulatory violation, such incident shall be reported as**
54 **a substantiated report.**

187.028. 1. If a report made pursuant to section 187.020 involves an in-home
2 **services client, the report shall contain the names and addresses of the in-home services**
3 **provider agency, the in-home services employee, the in-home services client or the**
4 **individual residing in their own home or residence, information regarding the nature of**
5 **the abuse or neglect, the name of the complainant, and any other information which might**
6 **be helpful in an investigation.**

7 **2. Upon receipt of a report pursuant to section 187.020 involving an in-home**
8 **services client, the department shall initiate a prompt and thorough investigation.**

9 **3. If the investigation indicates possible abuse or neglect of an individual residing**
10 **in their home or residence or an in-home services client, the investigator shall refer the**
11 **complaint together with the investigator's report to the department director or the**
12 **director's designee for appropriate action. If, during the investigation or at its completion,**
13 **the department has reasonable cause to believe that immediate removal is necessary to**

14 protect the individual residing in their own home or residence or the in-home services
15 client from abuse or neglect, the department or the local prosecuting attorney may, or the
16 attorney general upon request of the department shall, file a petition for temporary care
17 and protection of the individual residing in their home or residence or the in-home services
18 client in a circuit court of competent jurisdiction. The circuit court in which the petition
19 is filed shall have equitable jurisdiction to issue an ex parte order granting the department
20 authority for the temporary care and protection of the in-home services client, for a period
21 not to exceed thirty days.

22 4. Reports shall be confidential, as provided in section 187.087, provided that:

23 (1) The information in subsections 1 and 3 of this section shall be reported to any
24 immediate family member of, any person residing in the home with, any person with
25 durable power of attorney for or any person with legal guardianship for the in-home
26 services client who is the subject of the abuse or neglect; and

27 (2) Such information shall not be reported to any person pursuant to subdivision
28 (1) of this subsection if such person is the alleged perpetrator of the abuse or neglect.

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

32 6. No person who directs or exercises any authority over an individual residing in
33 their home or residence or the in-home services provider agency shall harass, dismiss or
34 retaliate against an in-home services client or an in-home services employee because he or
35 she or any member of his or her family has made a report of any violation or suspected
36 violation of laws, standards or regulations applying to the in-home services provider
37 agency or any in-home services employee which he or she has reasonable cause to believe
38 has been committed or has occurred.

39 7. Any person who knowingly abuses or neglects an in-home services client shall
40 be guilty of a class D felony.

41 8. The department shall maintain the employee disqualification list and place on
42 the employee disqualification list the names of any persons who have been finally
43 determined by the department pursuant to section 187.080 to have recklessly, knowingly
44 or purposely abused or neglected an individual residing in their home or residence or the
45 in-home services client while employed by an in-home services provider agency.

187.030. 1. The department of social services shall investigate incidents and reports
2 of elder abuse using the procedures established in sections 660.250 to 660.295, RSMo, and
3 shall promptly refer all suspected cases of elder abuse to the appropriate law enforcement
4 agency and prosecutor and shall determine whether protective services are required

5 pursuant to sections 660.250 to 660.295, RSMo.

6 **2. The division of aging and law enforcement agencies shall require training and**
7 **cross-training of all investigatory personnel and volunteers for local area agencies on aging**
8 **regarding the proper handling of cases involving elder abuse. All noninvestigatory**
9 **personnel and volunteers shall be instructed on certain aspects of elder abuse investigations**
10 **to ensure that such personnel and volunteers are able to recognize potential cases of abuse**
11 **or neglect, take the necessary measures to preserve evidence and any other steps necessary**
12 **to properly handle elder abuse or neglect cases. Nothing in this subsection shall be**
13 **construed to require noninvestigatory personnel and volunteers to act in an investigatory**
14 **capacity in investigations of elder abuse or neglect. The division of aging, in cooperation**
15 **with law enforcement agencies, shall, by rule, develop a checklist for division and law**
16 **enforcement personnel to follow when investigating possible elder abuse.**

17 **3. No rule or portion of a rule promulgated under the authority of this section shall**
18 **become effective unless it has been promulgated pursuant to chapter 536, RSMo.**

187.034. Any person, official or institution complying with the provisions of section
2 **187.020 in the making of a report or in cooperating with the department in any of its**
3 **activities pursuant to sections 187.020 to 187.030, except any person, official or institution**
4 **violating section 565.180, 565.182 or 565.184, RSMo, shall be immune from any civil or**
5 **criminal liability for making such a report or in cooperating with the department, unless**
6 **such person acted negligently, recklessly, in bad faith or with malicious purpose.**

187.050. 1. Any person having reasonable cause to believe that a misappropriation
2 **of property or funds of an individual residing in their own home or residence or an**
3 **in-home services client's property or funds, or the falsification of any documents verifying**
4 **service delivery to the in-home services client has occurred, shall report such information**
5 **to the department.**

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

11 **3. Any in-home services provider agency or in-home services employee who puts**
12 **to his or her own use or the individual providing care for an individual sixty years of age**
13 **or older residing in their own home or residence, use of the in-home services provider**
14 **agency or otherwise diverts from the individual residing in their home or residence or**
15 **in-home services client's use any personal property or funds of an individual residing in**
16 **their home or residence or an in-home service client of the in-home services client, or**

17 falsifies any documents for service delivery, shall be guilty of a class A misdemeanor.

18 4. Upon receipt of a report, the department shall initiate an investigation.

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

23 6. Reports shall be confidential, as provided in section 187.087, provided that:

24 (1) The information in subsections 3 and 6 of this section shall be reported to any
25 immediate family member of, any person residing in the home with, any person with
26 durable power of attorney for or any person with legal guardianship for the in-home
27 services client who is the subject of the misappropriation or falsification; and

28 (2) Such information shall not be reported to any person pursuant to subdivision
29 (1) of this subsection if such person is the alleged perpetrator of the misappropriation or
30 falsification.

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

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

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

46 10. The department shall maintain the employee disqualification list and place on
47 the employee disqualification list the names of any persons who have been finally
48 determined by the department to, pursuant to section 187.080, have misappropriated any
49 property or funds or falsified any documents for service delivery of an in-home services
50 client while employed by an in-home services provider agency.

187.080. 1. After an investigation and a determination has been made to place a
2 person's name on the employee disqualification list, that person shall be notified in writing

3 mailed to the person's last known address that:

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

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

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

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

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

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

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

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

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

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

39 the person shall be placed on the employee disqualification list.

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

45 9. The following persons shall receive an automatic lifetime listing on the employee
46 disqualification list:

47 (1) Any person who has, within the past ten years, been convicted of, pled guilty to
48 or nolo contendere to any felony stealing offense or any felony offense in chapter 198, 334,
49 565, 566, 568 or 573, RSMo;

50 (2) Based on substantiated reports:

51 (a) Any person who intentionally or negligently inflicts serious physical injury or
52 death to another person; or

53 (b) Any person who intentionally inflicts physical injury on another person.

54 10. Except as provided in subsection 9 of this section, the length of time the person's
55 name shall appear on the employee disqualification list shall be determined by the director
56 or the director's designee, based upon the following:

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

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

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

64 (4) Whether the person has previously been listed on the employee disqualification
65 list;

66 (5) Any mitigating circumstances; and

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

73 11. The removal of any person's name from the list pursuant to this section shall
74 not prevent the director from keeping records of all acts finally determined to have

75 occurred pursuant to this section.

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

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

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

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

82 **(4) Is approved by the department to issue certificates for nursing assistants**
83 **training; or**

84 **(5) Is an entity licensed pursuant to chapter 197, RSMo. The department shall**
85 **inform any person listed above who inquires of the division of aging whether or not a**
86 **particular name is on the list. The division may require that the request be made in**
87 **writing.**

88 **13. No person, corporation or association who receives the employee**
89 **disqualification list pursuant to subsection 12 of this section shall knowingly employ any**
90 **person who is on the employee disqualification list. Any person, corporation or association**
91 **who receives the employee disqualification list pursuant to subsection 12 of this section, or**
92 **any person responsible for providing health care service, who declines to employ or**
93 **terminates a person whose name is listed in this section shall be immune from suit by that**
94 **person or anyone else acting for or in behalf of that person for the failure to employ or for**
95 **the termination of the person whose name is listed on the employee disqualification list.**

96 **14. Any person who is listed on the employee disqualification list at the time of**
97 **termination of employment shall be ineligible for unemployment compensation. Any such**
98 **person who collects or attempts to collect unemployment compensation knowing that he**
99 **or she is listed on the employee disqualification list is guilty of a class B misdemeanor.**

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

187.084. 1. For the purposes of this section, the term "provider" means any person,

2 corporation or association who:

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

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

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

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

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

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

12 3. No later than two working days after hiring any person for a full-time, part-time
13 or temporary position who has contact with any patient or resident the provider shall, or
14 in the case of temporary employees hired through an employment agency, the employment
15 agency shall, prior to sending a temporary employee to a provider:

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

23 (2) Make an inquiry to the department of social services, whether the person is
24 listed on the employee disqualification list as provided in section 187.080.

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

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

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

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

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

38 **6. An applicant who knowingly fails to disclose his or her criminal history as**
39 **required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is**
40 **guilty of a class A misdemeanor if the provider knowingly hires a person to have contact**
41 **with patients or residents and the person has been convicted of, pled guilty to or nolo**
42 **contendere in this state or any other state or has been found guilty of a crime, which if**
43 **committed in Missouri would be a felony stealing offense, child abuse or neglect, a felony**
44 **violation of chapter 198, 334, 565, 566, 568, 569 or 573, RSMo, or any violation of**
45 **subsection 3 of section 187.020 or section 568.020, RSMo, or the person or the person's**
46 **foster care license has been refused, suspended or revoked pursuant to section 210.496,**
47 **RSMo, if such refusal, suspension or revocation is related to care or protection of children,**
48 **or the person is disqualified for employment by the department of mental health pursuant**
49 **to section 630.170, RSMo.**

50 **7. The department of social services shall promulgate rules and regulations to waive**
51 **the hiring restrictions pursuant to this section for good cause. For purposes of this section,**
52 **"good cause" means the department has made a determination by examining the**
53 **employee's prior work history and other relevant factors that such employee does not**
54 **present a risk to the health or safety of residents.**

55 **8. Any provider that demonstrates a pattern of violation of this section shall be**
56 **subject to the civil penalties established in section 198.067, RSMo, regardless of whether**
57 **such violations have been or are being corrected.**

187.087. Reports confidential pursuant to this section, sections 187.020 to 187.028
2 **and sections 187.050 and 187.080 shall not be deemed a public record and shall not be**
3 **subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of**
4 **the complainant or any person mentioned in the reports shall not be disclosed unless:**

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

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

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

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

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

15 **(6) Release of a name is requested by the division of family services for the purpose**
16 **of licensure pursuant to chapter 210, RSMo.**

187.100. 1. By July 1, 2002, the division of aging shall establish a telephone check-in pilot project in one area of the state to be designated by the division. Such pilot project shall require that a telephone check-in system be established for in-home services employees, as defined in section 660.250, RSMo, to accurately document the actual time that such employees spend in clients' homes by requiring such employees to clock in and out of the client's home by telephone. Such system shall also require in-home services employees to thoroughly document the specific services delivered to clients.

2. The division may promulgate rules to implement the provisions of this section. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

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

191.900. As used in sections 191.900 to 191.910, the following terms mean:

(1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse" includes the taking, obtaining, using, transferring, concealing, appropriating or taking possession of property of another person without such person's consent;

(2) "Claim", any attempt to cause a health care payer to make a health care payment;

(3) "False", wholly or partially untrue. A false statement or false representation of a material fact means the failure to reveal material facts in a manner which is intended to deceive a health care payer with respect to a claim;

(4) "Health care", any service, assistance, care, product, device or thing provided pursuant to a medical assistance program, or for which payment is requested or received, in whole or part, pursuant to a medical assistance program;

(5) "Health care payer", a medical assistance program, or any person reviewing, adjusting, approving or otherwise handling claims for health care on behalf of or in connection with a medical assistance program;

(6) "Health care payment", a payment made, or the right under a medical assistance program to have a payment made, by a health care payer for a health care service;

(7) "Health care provider", any person delivering, or purporting to deliver, any health care, and including any employee, agent or other representative of such a person;

(8) "Medical assistance program", [any program to provide or finance health care to recipients which is established pursuant to title 42 of the United States Code, any successor federal health insurance program, or a waiver granted thereunder. A medical assistance program may be funded either solely by state funds or by state and federal funds jointly] **any federal health care program, as defined in 42 U.S.C. Section 1320a-7b(f).** The term "medical

24 assistance program" shall include the medical assistance program provided by section 208.151,
25 RSMo, et seq., and any state agency or agencies administering all or any part of such a program;

26 (9) "Person", a natural person, corporation, partnership, association or any legal entity.

191.910. 1. The attorney general shall have authority to investigate alleged or suspected
2 violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to**
3 **a violation of sections 191.900 to 191.910** and shall have all powers provided by sections
4 407.040 to 407.090, RSMo, in connection with investigations of alleged or suspected violations
5 of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation**
6 **of sections 191.900 to 191.910** as if the acts enumerated in subsections 1 to 3 of section 191.905
7 are unlawful acts proscribed by chapter 407, RSMo, provided that if the attorney general
8 exercises such powers, the provisions of section 407.070, RSMo, shall also be applicable; **and**
9 **may exercise all of the powers provided by sections 542.271 to 542.296, RSMo, in**
10 **connection with investigations of alleged or suspected violations of sections 191.900 to**
11 **191.910 or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**
12 **to 191.910;** and may exercise all of the powers provided by subsections 1 and 2 of section
13 578.387, RSMo, in connection with investigations of alleged or suspected violations of sections
14 191.900 to 191.910, as if the acts enumerated in subsections 1 to 3 of section 191.905 involve
15 "public assistance" as defined by section 578.375, RSMo. The attorney general and [his] **the**
16 **attorney general's** authorized investigators shall be authorized to serve all subpoenas, **including**
17 **investigative subpoenas,** and civil process related to the enforcement of sections 191.900 to
18 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**
19 **to 191.910** and chapter 407, RSMo. [In order for the attorney general to commence a state
20 prosecution] For violations of sections 191.900 to 191.910, the attorney general shall **either**
21 **commence a state prosecution or** prepare and forward a report of the violations to the
22 appropriate prosecuting attorney. Upon receiving a referral, the prosecuting attorney shall either
23 commence a prosecution based on the report by the filing of a complaint, information, or
24 indictment within sixty days of receipt of said report or shall file a written statement with the
25 attorney general explaining why criminal charges should not be brought. [This time period may
26 be extended by the prosecuting attorney with the agreement of the attorney general for an
27 additional sixty days.] If the prosecuting attorney commences a criminal prosecution, the
28 attorney general or [his] **the attorney general's** designee shall be permitted by the court to
29 participate as a special assistant prosecuting attorney in settlement negotiations and all court
30 proceedings, subject to the authority of the prosecuting attorney, for the purpose of providing
31 such assistance as may be necessary. If the prosecuting attorney fails to commence a prosecution
32 and fails to file a written statement listing the reasons why criminal charges should not be
33 brought within the appropriate time period, or declines to prosecute on the basis of inadequate

34 office resources, the attorney general [shall have authority to] **may** commence prosecutions for
35 violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to**
36 **a violation of sections 191.900 to 191.910**. In cases where a defendant pursuant to a common
37 scheme or plan has committed acts which constitute or would constitute violations of sections
38 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections**
39 **191.900 to 191.910** in more than one state, the attorney general shall have the authority to
40 represent the state of Missouri in any plea agreement which resolves all criminal prosecutions
41 within and without the state, and such agreement shall be binding on all state prosecutors.

42 2. In any investigation, hearing or other proceeding pursuant to sections 191.900 to
43 191.910, **or sections 187.020 to 187.028, RSMo, if related to a violation of sections 191.900**
44 **to 191.910** any record in the possession or control of a health care provider, or in the possession
45 or control of another person on behalf of a health care provider, including but not limited to any
46 record relating to patient care, business or accounting records, payroll records and tax records,
47 whether written or in an electronic format, shall be made available by the health care provider
48 to the attorney general or the court, and shall be admissible into evidence, regardless of any
49 statutory or common law privilege which such health care provider, record custodian or patient
50 might otherwise invoke or assert. The provisions of section 326.151, RSMo, shall not apply to
51 actions brought pursuant to sections 191.900 to 191.910. The attorney general shall not disclose
52 any record obtained pursuant to this section, other than in connection with a proceeding instituted
53 or pending in any court or administrative agency. The access, provision, use, and disclosure of
54 records or material subject to the provisions of 42 U.S.C. section 290dd-2 shall be subject to said
55 section, as may be amended from time to time, and to regulations promulgated pursuant to said
56 section.

57 3. Sections 191.900 to 191.910 shall not be construed to prohibit or limit any other
58 criminal or civil action against a health care provider for the violation of any other law. Any
59 complaint, investigation or report received or completed pursuant to sections [198.070 and]
60 **187.020 to 187.028, RSMo, section 198.090, RSMo, subsection 2 of section 205.967, RSMo,**
61 **sections 375.991 to 375.994, RSMo, section 578.387, RSMo, or [sections 660.300 and 660.305]**
62 **section 187.050, RSMo**, which indicates a violation of sections 191.900 to 191.910, shall be
63 referred to the attorney general. A referral to the attorney general pursuant to this subsection
64 shall not preclude the agencies charged with enforcing the foregoing sections from conducting
65 investigations, providing protective services or taking administrative action regarding the
66 complaint, investigation or report referred to the attorney general, as may be provided by such
67 sections; provided that all material developed by the attorney general in the course of an
68 investigation pursuant to sections 191.900 to 191.910 shall not be subject to subpoena,
69 discovery, or other legal or administrative process in the course of any such administrative

70 action. Sections 191.900 to 191.910 take precedence over the provisions of sections [198.070
71 and] **187.020 to 187.028, RSMo, section** 198.090, RSMo, subsection 2 of section 205.967,
72 RSMo, sections 375.991 to 375.994, RSMo, section 578.387, RSMo, and [sections 660.300 and
73 660.305] **section 187.050**, RSMo, to the extent such provisions are inconsistent or overlap.

198.012. 1. The provisions of **section 187.020, RSMo, and** sections 198.003 to 198.136
2 shall not apply to any of the following entities:

3 (1) Any hospital, facility or other entity operated by the state or the United States;

4 (2) Any facility or other entity otherwise licensed by the state and operating exclusively
5 under such license and within the limits of such license, unless the activities and services are or
6 are held out as being activities or services normally provided by a licensed facility [under]
7 **pursuant to section 187.020, RSMo, and** sections 198.003 to 198.186, 198.200, 208.030, and
8 208.159, RSMo, except hospitals licensed [under] **pursuant to** the provisions of chapter 197,
9 RSMo;

10 (3) Any hospital licensed [under] **pursuant to** the provisions of chapter 197, RSMo,
11 provided that the residential care facility II, intermediate care facility or skilled nursing facility
12 are physically attached to the acute care hospital; and provided further that the department of
13 health in promulgating rules, regulations and standards pursuant to section 197.080, RSMo, with
14 respect to such facilities, shall establish requirements and standards for such hospitals consistent
15 with the intent of this chapter, **section 187.020**, and sections 198.067, [198.070,] 198.090,
16 198.093 and 198.139 to 198.180 shall apply to every residential care facility II, intermediate care
17 facility or skilled nursing facility regardless of physical proximity to any other health care
18 facility;

19 (4) Any facility licensed pursuant to sections 630.705 to 630.760, RSMo, which provides
20 care, treatment, habilitation and rehabilitation exclusively to persons who have a primary
21 diagnosis of mental disorder, mental illness, mental retardation or developmental disabilities, as
22 defined in section 630.005, RSMo;

23 (5) Any provider of care under a life care contract, except to any portion of the provider's
24 premises on which the provider offers services provided by an intermediate care facility or
25 skilled nursing facility as defined in section 198.006. For the purposes of this section, "provider
26 of care under a life care contract" means any person contracting with any individual to furnish
27 specified care and treatment to the individual for the life of the individual, with significant
28 prepayment for such care and treatment.

29 2. Nothing in this section shall prohibit any of these entities from applying for a license
30 [under] **pursuant to** sections 198.003 to 198.136.

198.026. 1. Whenever a duly authorized representative of the department finds upon an
2 inspection of a facility that it is not in compliance with the provisions of sections 198.003 to

3 198.096 and the standards established thereunder, the operator or administrator shall be informed
4 of the deficiencies in an exit interview conducted with the operator or administrator or his
5 designee. The department shall inform the operator or administrator, in writing, of any violation
6 of a class I standard at the time the determination is made. A written report shall be prepared of
7 any deficiency for which there has not been prompt remedial action, and a copy of such report
8 and a written correction order shall be sent to the operator or administrator by certified mail or
9 other delivery service that provides a dated receipt of delivery at the facility address within ten
10 working days after the inspection, stating separately each deficiency and the specific statute or
11 regulation violated.

12 2. The operator or administrator shall have five working days following receipt of a
13 written report and correction order regarding a violation of a class I standard and ten working
14 days following receipt of the report and correction order regarding violations of class II or class
15 III standards to request any conference and to submit a plan of correction for the department's
16 approval which contains specific dates for achieving compliance. Within five working days after
17 receiving a plan of correction regarding a violation of a class I standard and within ten working
18 days after receiving a plan of correction regarding a violation of a class II or III standard, the
19 department shall give its written approval or rejection of the plan. If there was a violation of any
20 class I standard, immediate corrective action shall be taken by the operator or administrator and
21 a written plan of correction shall be submitted to the department. The department shall give its
22 written approval or rejection of the plan and if the plan is acceptable, a reinspection shall be
23 conducted within twenty calendar days of the exit interview to determine if deficiencies have
24 been corrected. If there was a violation of any class II standard and the plan of correction is
25 acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar
26 days from the date of the exit conference to determine the status of all previously cited
27 deficiencies. If there was a violation of class III standards sufficient to establish that the facility
28 was not in substantial compliance, an unannounced reinspection shall be conducted within one
29 hundred twenty days of the exit interview to determine the status of previously identified
30 deficiencies.

31 **3. For any violation or deficiency cited that involves staffing issues directly related**
32 **to patient care, the division of aging may direct a facility to implement corrective actions**
33 **relating to staffing, including but not limited to qualifications of staff, staffing ratios,**
34 **training plans or plans for staff supervision.**

35 4. If, following the reinspection, the facility is found not in substantial compliance with
36 sections 198.003 to 198.096 and the standards established thereunder or the operator is not
37 correcting the noncompliance in accordance with the approved plan of correction, the department
38 shall issue a notice of noncompliance, which shall be sent by certified mail or other delivery

39 service that provides a dated receipt of delivery to each person disclosed to be an owner or
40 operator of the facility, according to the most recent information or documents on file with the
41 department.

42 [4.] 5. The notice of noncompliance shall inform the operator or administrator that the
43 department may seek the imposition of any of the sanctions and remedies provided for in section
44 198.067, or any other action authorized by law.

45 [5.] 6. At any time after an inspection is conducted, the operator may choose to enter into
46 a consent agreement with the department to obtain a probationary license. The consent
47 agreement shall include a provision that the operator will voluntarily surrender the license if
48 substantial compliance is not reached in accordance with the terms and deadlines established
49 under the agreement. The agreement shall specify the stages, actions and time span to achieve
50 substantial compliance.

51 [6.] 7. Whenever a notice of noncompliance has been issued, the operator shall post a
52 copy of the notice of noncompliance and a copy of the most recent inspection report in a
53 conspicuous location in the facility, and the department shall send a copy of the notice of
54 noncompliance to the division of family services of the department of social services, the
55 department of mental health, and any other concerned federal, state or local governmental
56 agencies.

**198.030. Notwithstanding any other law to the contrary, every residential care
2 facility I and residential care facility II shall meet or exceed the federal requirements
3 relating to the posting of deficiencies for federally certified long-term care facilities.**

198.032. 1. Nothing contained in **sections 187.020 to 187.028, RSMo, and** sections
2 198.003 to 198.186 shall permit the public disclosure by the department of confidential medical,
3 social, personal or financial records of any resident in any facility, except when disclosed in a
4 manner which does not identify any resident, or when ordered to do so by a court of competent
5 jurisdiction. Such records shall be accessible without court order for examination and copying
6 only to the following persons or offices, or to their designees:

- 7 (1) The department or any person or agency designated by the department;
- 8 (2) The attorney general;
- 9 (3) The department of mental health for residents placed through that department;
- 10 (4) Any appropriate law enforcement agency;
- 11 (5) The resident, [his] **the resident's** guardian, or any other person designated by the
12 resident; and
- 13 (6) Appropriate committees of the general assembly and the state auditor, but only to the
14 extent of financial records which the operator is required to maintain pursuant to sections
15 198.088 and 198.090.

16 2. Inspection reports and written reports of investigations of complaints, of substantiated
17 reports of abuse and neglect received in accordance with [section 198.070] **sections 187.020 to**
18 **187.028, RSMo**, and complaints received by the department relating to the quality of care of
19 facility residents, shall be accessible to the public for examination and copying, provided that
20 such reports are disclosed in a manner which does not identify the complainant or any particular
21 resident. Records and reports shall clearly show what steps the department and the institution
22 are taking to resolve problems indicated in said inspections, reports and complaints.

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

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

198.068. In accordance with the provisions of subsection 10 of section 198.067, the
2 **general assembly specifically intends for the civil penalties in section 198.067 to be imposed**
3 **in cases where there has been more than one violation or a pattern of violations, regardless**
4 **of any subsequent correction of the violation by a nursing home.**

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

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

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

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

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

17 to or on behalf of the resident;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

198.526. 1. The division of aging shall inspect all facilities licensed by the division at
2 least twice each year. Such inspections shall be conducted:

3 (1) Without the prior notification of the facility; and

4 (2) At times of the day, on dates and at intervals which do not permit facilities to

5 anticipate such inspections.

6 2. The division shall annually reevaluate the inspection process to ensure the
7 requirements of subsection 1 of this section are met.

8 **3. Information regarding unannounced inspections shall be disclosed to employees**
9 **of the division of aging on a need-to-know basis only. Any employee of the division of**
10 **aging who knowingly discloses the time of an unannounced inspection in violation of this**
11 **section is guilty of a class A misdemeanor and shall have his or her employment**
12 **immediately terminated.**

198.532. Complaints filed with the division of aging against a long-term care facility
2 which allege that harm has occurred or is likely to occur to a resident or residents of the facility
3 due to actions or the lack of actions taken by the facility shall be investigated within thirty days
4 of receipt of such complaints. The purpose of such investigation shall be to ensure the safety,
5 protection and care of all residents of the facility likely to be affected by the alleged action or
6 inaction. Such investigation shall be in addition to the investigation requirements for abuse and
7 neglect reports pursuant to [section 198.070] **sections 187.020 to 187.028, RSMo.** The division
8 shall provide the results of all investigations in accordance with section [660.320] **187.087,**
9 **RSMo.** The division shall provide the results of such investigation in writing to all parties to the
10 complaint, and if requested, to any of the facility's residents, or their family members or
11 guardians. Complaints and written results will be readily available for public access and review
12 at the division of aging and at the long-term care facility. Personal information identifying the
13 resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the
14 legal guardian of the resident in question. This information will remain readily available for a
15 period of time determined by the division of aging.

208.010. 1. In determining the eligibility of a claimant for public assistance pursuant
2 to this law, it shall be the duty of the division of family services to consider and take into account
3 all facts and circumstances surrounding the claimant, including his or her living conditions,
4 earning capacity, income and resources, from whatever source received, and if from all the facts
5 and circumstances the claimant is not found to be in need, assistance shall be denied. In
6 determining the need of a claimant, the costs of providing medical treatment which may be
7 furnished pursuant to sections 208.151 to 208.158 and 208.162 shall be disregarded. The amount
8 of benefits, when added to all other income, resources, support, and maintenance shall provide
9 such persons with reasonable subsistence compatible with decency and health in accordance with
10 the standards developed by the division of family services; provided, when a husband and wife
11 are living together, the combined income and resources of both shall be considered in
12 determining the eligibility of either or both. "Living together" for the purpose of this chapter is
13 defined as including a husband and wife separated for the purpose of obtaining medical care or

14 nursing home care, except that the income of a husband or wife separated for such purpose shall
15 be considered in determining the eligibility of his or her spouse, only to the extent that such
16 income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the
17 division) of such husband or wife living separately. In determining the need of a claimant in
18 federally aided programs there shall be disregarded such amounts per month of earned income
19 in making such determination as shall be required for federal participation by the provisions of
20 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments thereto. When
21 federal law or regulations require the exemption of other income or resources, the division of
22 family services may provide by rule or regulation the amount of income or resources to be
23 disregarded.

24 2. Benefits shall not be payable to any claimant who:

25 (1) Has or whose spouse with whom he or she is living has, prior to July 1, 1989, given
26 away or sold a resource within the time and in the manner specified in this subdivision. In
27 determining the resources of an individual, unless prohibited by federal statutes or regulations,
28 there shall be included (but subject to the exclusions pursuant to subdivisions (4) and (5) of this
29 subsection, and subsection 5 of this section) any resource or interest therein owned by such
30 individual or spouse within the twenty-four months preceding the initial investigation, or at any
31 time during which benefits are being drawn, if such individual or spouse gave away or sold such
32 resource or interest within such period of time at less than fair market value of such resource or
33 interest for the purpose of establishing eligibility for benefits, including but not limited to
34 benefits based on December, 1973, eligibility requirements, as follows:

35 (a) Any transaction described in this subdivision shall be presumed to have been for the
36 purpose of establishing eligibility for benefits or assistance pursuant to this chapter unless such
37 individual furnishes convincing evidence to establish that the transaction was exclusively for
38 some other purpose;

39 (b) The resource shall be considered in determining eligibility from the date of the
40 transfer for the number of months the uncompensated value of the disposed of resource is
41 divisible by the average monthly grant paid or average Medicaid payment in the state at the time
42 of the investigation to an individual or on his or her behalf under the program for which benefits
43 are claimed, provided that:

44 a. When the uncompensated value is twelve thousand dollars or less, the resource shall
45 not be used in determining eligibility for more than twenty-four months; or

46 b. When the uncompensated value exceeds twelve thousand dollars, the resource shall
47 not be used in determining eligibility for more than sixty months;

48 (2) The provisions of subdivision (1) of subsection 2 of this section shall not apply to
49 a transfer, other than a transfer to claimant's spouse, made prior to March 26, 1981, when the

50 claimant furnishes convincing evidence that the uncompensated value of the disposed of resource
51 or any part thereof is no longer possessed or owned by the person to whom the resource was
52 transferred;

53 (3) Has received, or whose spouse with whom he or she is living has received, benefits
54 to which he or she was not entitled through misrepresentation or nondisclosure of material facts
55 or failure to report any change in status or correct information with respect to property or income
56 as required by section 208.210. A claimant ineligible pursuant to this subsection shall be
57 ineligible for such period of time from the date of discovery as the division of family services
58 may deem proper; or in the case of overpayment of benefits, future benefits may be decreased,
59 suspended or entirely withdrawn for such period of time as the division may deem proper;

60 (4) Owns or possesses resources in the sum of one thousand dollars or more; provided,
61 however, that if such person is married and living with spouse, he or she, or they, individually
62 or jointly, may own resources not to exceed [two] **seven** thousand dollars; and provided further,
63 that in the case of a temporary assistance for needy families claimant, the provision of this
64 subsection shall not apply;

65 (5) Prior to October 1, 1989, owns or possesses property of any kind or character,
66 excluding amounts placed in an irrevocable prearranged funeral or burial contract pursuant to
67 subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053,
68 RSMo, or has an interest in property, of which he or she is the record or beneficial owner, the
69 value of such property, as determined by the division of family services, less encumbrances of
70 record, exceeds twenty-nine thousand dollars, or if married and actually living together with
71 husband or wife, if the value of his or her property, or the value of his or her interest in property,
72 together with that of such husband and wife, exceeds such amount;

73 (6) In the case of temporary assistance for needy families, if the parent, stepparent, and
74 child or children in the home owns or possesses property of any kind or character, or has an
75 interest in property for which he or she is a record or beneficial owner, the value of such
76 property, as determined by the division of family services and as allowed by federal law or
77 regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home
78 occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial contract
79 pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of
80 section 436.053, RSMo, one automobile which shall not exceed a value set forth by federal law
81 or regulation and for a period not to exceed six months, such other real property which the family
82 is making a good-faith effort to sell, if the family agrees in writing with the division of family
83 services to sell such property and from the net proceeds of the sale repay the amount of
84 assistance received during such period. If the property has not been sold within six months, or
85 if eligibility terminates for any other reason, the entire amount of assistance paid during such

86 period shall be a debt due the state;

87 (7) Is an inmate of a public institution, except as a patient in a public medical institution.

88 3. In determining eligibility and the amount of benefits to be granted pursuant to
89 federally aided programs, the income and resources of a relative or other person living in the
90 home shall be taken into account to the extent the income, resources, support and maintenance
91 are allowed by federal law or regulation to be considered.

92 4. In determining eligibility and the amount of benefits to be granted pursuant to
93 federally aided programs, the value of burial lots or any amounts placed in an irrevocable
94 prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and
95 subdivision (5) of subsection 1 of section 436.053, RSMo, shall not be taken into account or
96 considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged
97 funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as
98 defined in section 214.270, RSMo, and any memorial, monument, marker, tombstone or letter
99 marking a burial space. If the beneficiary, as defined in chapter 436, RSMo, of an irrevocable
100 prearranged funeral or burial contract receives any public assistance benefits pursuant to this
101 chapter and if the purchaser of such contract or his or her successors in interest cancel or amend
102 the contract so that any person will be entitled to a refund, such refund shall be paid to the state
103 of Missouri up to the amount of public assistance benefits provided pursuant to this chapter with
104 any remainder to be paid to those persons designated in chapter 436, RSMo.

105 5. In determining the total property owned pursuant to subdivision (5) of subsection 2
106 of this section, or resources, of any person claiming or for whom public assistance is claimed,
107 there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or
108 any two or more policies or contracts, or any combination of policies and contracts, which
109 provides for the payment of one thousand five hundred dollars or less upon the death of any of
110 the following:

111 (1) A claimant or person for whom benefits are claimed; or

112 (2) The spouse of a claimant or person for whom benefits are claimed with whom he or
113 she is living.

114

115 If the value of such policies exceeds one thousand five hundred dollars, then the total value of
116 such policies may be considered in determining resources; except that, in the case of temporary
117 assistance for needy families, there shall be disregarded any prearranged funeral or burial
118 contract, or any two or more contracts, which provides for the payment of one thousand five
119 hundred dollars or less per family member.

120 6. Beginning September 30, 1989, when determining the eligibility of institutionalized
121 spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided for

122 in section 208.151 and 42 U.S.C. Sections 1396a et seq., the division of family services shall
123 comply with the provisions of the federal statutes and regulations. As necessary, the division
124 shall by rule or regulation implement the federal law and regulations which shall include but not
125 be limited to the establishment of income and resource standards and limitations. The division
126 shall require:

127 (1) That at the beginning of a period of continuous institutionalization that is expected
128 to last for thirty days or more, the institutionalized spouse, or the community spouse, may request
129 an assessment by the division of family services of total countable resources owned by either or
130 both spouses;

131 (2) That the assessed resources of the institutionalized spouse and the community spouse
132 may be allocated so that each receives an equal share;

133 (3) That upon an initial eligibility determination, if the community spouse's share does
134 not equal at least twelve thousand dollars, the institutionalized spouse may transfer to the
135 community spouse a resource allowance to increase the community spouse's share to twelve
136 thousand dollars;

137 (4) That in the determination of initial eligibility of the institutionalized spouse, no
138 resources attributed to the community spouse shall be used in determining the eligibility of the
139 institutionalized spouse, except to the extent that the resources attributed to the community
140 spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section
141 1396r-5;

142 (5) That beginning in January, 1990, the amount specified in subdivision (3) of this
143 subsection shall be increased by the percentage increase in the consumer price index for all urban
144 consumers between September, 1988, and the September before the calendar year involved; and

145 (6) That beginning the month after initial eligibility for the institutionalized spouse is
146 determined, the resources of the community spouse shall not be considered available to the
147 institutionalized spouse during that continuous period of institutionalization.

148 7. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the periods
149 required and for the reasons specified in 42 U.S.C. Section 1396p.

150 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant to
151 the provisions of section 208.080.

152 9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to
153 this chapter there shall be disregarded unless otherwise provided by federal or state statutes, the
154 home of the applicant or recipient when the home is providing shelter to the applicant or
155 recipient, or his or her spouse or dependent child. The division of family services shall establish
156 by rule or regulation in conformance with applicable federal statutes and regulations a definition
157 of the home and when the home shall be considered a resource that shall be considered in

158 determining eligibility.

159 10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient
160 who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary
161 Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts
162 as determined due pursuant to the applicable provisions of federal regulations pertaining to Title
163 XVIII Medicare Part B, except the applicable Title XIX cost sharing.

164 11. A "community spouse" is defined as being the noninstitutionalized spouse.

208.151. 1. For the purpose of paying medical assistance on behalf of needy persons and
2 to comply with Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security
3 Act (42 U.S.C. section 301 et seq.) as amended, the following needy persons shall be eligible to
4 receive medical assistance to the extent and in the manner hereinafter provided:

5 (1) All recipients of state supplemental payments for the aged, blind and disabled;

6 (2) All recipients of aid to families with dependent children benefits, including all
7 persons under nineteen years of age who would be classified as dependent children except for
8 the requirements of subdivision (1) of subsection 1 of section 208.040;

9 (3) All recipients of blind pension benefits;

10 (4) All persons who would be determined to be eligible for old age assistance benefits,
11 permanent and total disability benefits, or aid to the blind benefits under the eligibility standards
12 in effect December 31, 1973, or less restrictive standards as established by rule of the division
13 of family services, who are sixty-five years of age or over and are patients in state institutions
14 for mental diseases or tuberculosis;

15 (5) All persons under the age of twenty-one years who would be eligible for aid to
16 families with dependent children except for the requirements of subdivision (2) of subsection 1
17 of section 208.040, and who are residing in an intermediate care facility, or receiving active
18 treatment as inpatients in psychiatric facilities or programs, as defined in 42 U.S.C. 1396d, as
19 amended;

20 (6) All persons under the age of twenty-one years who would be eligible for aid to
21 families with dependent children benefits except for the requirement of deprivation of parental
22 support as provided for in subdivision (2) of subsection 1 of section 208.040;

23 (7) All persons eligible to receive nursing care benefits;

24 (8) All recipients of family foster home or nonprofit private child-care institution care,
25 subsidized adoption benefits and parental school care wherein state funds are used as partial or
26 full payment for such care;

27 (9) All persons who were recipients of old age assistance benefits, aid to the permanently
28 and totally disabled, or aid to the blind benefits on December 31, 1973, and who continue to
29 meet the eligibility requirements, except income, for these assistance categories, but who are no

30 longer receiving such benefits because of the implementation of Title XVI of the federal Social
31 Security Act, as amended;

32 (10) Pregnant women who meet the requirements for aid to families with dependent
33 children, except for the existence of a dependent child in the home;

34 (11) Pregnant women who meet the requirements for aid to families with dependent
35 children, except for the existence of a dependent child who is deprived of parental support as
36 provided for in subdivision (2) of subsection 1 of section 208.040;

37 (12) Pregnant women or infants under one year of age, or both, whose family income
38 does not exceed an income eligibility standard equal to one hundred eighty-five percent of the
39 federal poverty level as established and amended by the federal Department of Health and
40 Human Services, or its successor agency;

41 (13) Children who have attained one year of age but have not attained six years of age
42 who are eligible for medical assistance [under] **pursuant to** 6401 of P.L. 101-239 (Omnibus
43 Budget Reconciliation Act of 1989). The division of family services shall use an income
44 eligibility standard equal to one hundred thirty-three percent of the federal poverty level
45 established by the Department of Health and Human Services, or its successor agency;

46 (14) Children who have attained six years of age but have not attained nineteen years of
47 age. For children who have attained six years of age but have not attained nineteen years of age,
48 the division of family services shall use an income assessment methodology which provides for
49 eligibility when family income is equal to or less than equal to one hundred percent of the federal
50 poverty level established by the Department of Health and Human Services, or its successor
51 agency. As necessary to provide Medicaid coverage [under] **pursuant to** this subdivision, the
52 department of social services may revise the state Medicaid plan to extend coverage [under]
53 **pursuant to** 42 U.S.C. 1396a (a)(10)(A)(i)(III) to children who have attained six years of age
54 but have not attained nineteen years of age as permitted by paragraph (2) of subsection (n) of 42
55 U.S.C. 1396d using a more liberal income assessment methodology as authorized by paragraph
56 (2) of subsection (r) of 42 U.S.C. 1396a;

57 (15) The following children with family income which does not exceed two hundred
58 percent of the federal poverty guideline for the applicable family size:

59 (a) Infants who have not attained one year of age with family income greater than one
60 hundred eighty-five percent of the federal poverty guideline for the applicable family size;

61 (b) Children who have attained one year of age but have not attained six years of age
62 with family income greater than one hundred thirty-three percent of the federal poverty guideline
63 for the applicable family size; and

64 (c) Children who have attained six years of age but have not attained nineteen years of
65 age with family income greater than one hundred percent of the federal poverty guideline for the

66 applicable family size. Coverage under this subdivision shall be subject to the receipt of
67 notification by the director of the department of social services and the revisor of statutes of
68 approval from the secretary of the U.S. Department of Health and Human Services of
69 applications for waivers of federal requirements necessary to promulgate regulations to
70 implement this subdivision. The director of the department of social services shall apply for
71 such waivers. The regulations may provide for a basic primary and preventive health care
72 services package, not to include all medical services covered by section 208.152, and may also
73 establish co-payment, coinsurance, deductible, or premium requirements for medical assistance
74 **[under] pursuant to** this subdivision. Eligibility for medical assistance **[under] pursuant to** this
75 subdivision shall be available only to those infants and children who do not have or have not
76 been eligible for employer-subsidized health care insurance coverage for the six months prior
77 to application for medical assistance. Children are eligible for employer-subsidized coverage
78 through either parent, including the noncustodial parent. The division of family services may
79 establish a resource eligibility standard in assessing eligibility for persons **[under] pursuant to**
80 this subdivision. The division of medical services shall define the amount and scope of benefits
81 which are available to individuals **[under] pursuant to** this subdivision in accordance with the
82 requirement of federal law and regulations. Coverage **[under] pursuant to** this subdivision shall
83 be subject to appropriation to provide services approved **[under] pursuant to** the provisions of
84 this subdivision;

85 (16) The division of family services shall not establish a resource eligibility standard in
86 assessing eligibility for persons **[under] pursuant to** subdivision (12), (13) or (14) of this
87 subsection. The division of medical services shall define the amount and scope of benefits which
88 are available to individuals eligible **[under] pursuant to** each of the subdivisions (12), (13), and
89 (14) of this subsection, in accordance with the requirements of federal law and regulations
90 promulgated thereunder except that the scope of benefits shall include case management
91 services;

92 (17) Notwithstanding any other provisions of law to the contrary, ambulatory prenatal
93 care shall be made available to pregnant women during a period of presumptive eligibility
94 pursuant to 42 U.S.C. section 1396r-1, as amended;

95 (18) A child born to a woman eligible for and receiving medical assistance **[under]**
96 **pursuant to** this section on the date of the child's birth shall be deemed to have applied for
97 medical assistance and to have been found eligible for such assistance under such plan on the
98 date of such birth and to remain eligible for such assistance for a period of time determined in
99 accordance with applicable federal and state law and regulations so long as the child is a member
100 of the woman's household and either the woman remains eligible for such assistance or for
101 children born on or after January 1, 1991, the woman would remain eligible for such assistance

102 if she were still pregnant. Upon notification of such child's birth, the division of family services
103 shall assign a medical assistance eligibility identification number to the child so that claims may
104 be submitted and paid under such child's identification number;

105 (19) Pregnant women and children eligible for medical assistance pursuant to
106 subdivision (12), (13) or (14) of this subsection shall not as a condition of eligibility for medical
107 assistance benefits be required to apply for aid to families with dependent children. The division
108 of family services shall utilize an application for eligibility for such persons which eliminates
109 information requirements other than those necessary to apply for medical assistance. The
110 division shall provide such application forms to applicants whose preliminary income
111 information indicates that they are ineligible for aid to families with dependent children.
112 Applicants for medical assistance benefits [under] **pursuant to** subdivision (12), (13) or (14)
113 shall be informed of the aid to families with dependent children program and that they are
114 entitled to apply for such benefits. Any forms utilized by the division of family services for
115 assessing eligibility [under] **pursuant to** this chapter shall be as simple as practicable;

116 (20) Subject to appropriations necessary to recruit and train such staff, the division of
117 family services shall provide one or more full-time, permanent case workers to process
118 applications for medical assistance at the site of a health care provider, if the health care provider
119 requests the placement of such case workers and reimburses the division for the expenses
120 including but not limited to salaries, benefits, travel, training, telephone, supplies, and
121 equipment, of such case workers. The division may provide a health care provider with a
122 part-time or temporary case worker at the site of a health care provider if the health care provider
123 requests the placement of such a case worker and reimburses the division for the expenses,
124 including but not limited to the salary, benefits, travel, training, telephone, supplies, and
125 equipment, of such a case worker. The division may seek to employ such case workers who are
126 otherwise qualified for such positions and who are current or former welfare recipients. The
127 division may consider training such current or former welfare recipients as case workers for this
128 program;

129 (21) Pregnant women who are eligible for, have applied for and have received medical
130 assistance [under] **pursuant to** subdivision (2), (10), (11) or (12) of this subsection shall
131 continue to be considered eligible for all pregnancy-related and postpartum medical assistance
132 provided [under] **pursuant to** section 208.152 until the end of the sixty-day period beginning
133 on the last day of their pregnancy;

134 (22) Case management services for pregnant women and young children at risk shall be
135 a covered service. To the greatest extent possible, and in compliance with federal law and
136 regulations, the department of health shall provide case management services to pregnant women
137 by contract or agreement with the department of social services through local health departments

organized [under] **pursuant to** the provisions of chapter 192, RSMo, or chapter 205, RSMo, or a city health department operated under a city charter or a combined city-county health department or other department of health designees. To the greatest extent possible the department of social services and the department of health shall mutually coordinate all services for pregnant women and children with the crippled children's program, the prevention of mental retardation program and the prenatal care program administered by the department of health. The department of social services shall by regulation establish the methodology for reimbursement for case management services provided by the department of health. For purposes of this section, the term "case management" shall mean those activities of local public health personnel to identify prospective Medicaid-eligible high-risk mothers and enroll them in the state's Medicaid program, refer them to local physicians or local health departments who provide prenatal care under physician protocol and who participate in the Medicaid program for prenatal care and to ensure that said high-risk mothers receive support from all private and public programs for which they are eligible and shall not include involvement in any Medicaid prepaid, case-managed programs;

(23) By January 1, 1988, the department of social services and the department of health shall study all significant aspects of presumptive eligibility for pregnant women and submit a joint report on the subject, including projected costs and the time needed for implementation, to the general assembly. The department of social services, at the direction of the general assembly, may implement presumptive eligibility by regulation promulgated pursuant to chapter 207, RSMo;

(24) All recipients who would be eligible for aid to families with dependent children benefits except for the requirements of paragraph (d) of subdivision (1) of section 208.150;

(25) All persons who would be determined to be eligible for old age assistance benefits, permanent and total disability benefits, or aid to the blind benefits, under the eligibility standards in effect December 31, 1973, or those supplemental security income recipients who would be determined eligible for general relief benefits under the eligibility standards in effect December 31, 1973, except income; or less restrictive standards as established by rule of the division of family services. If federal law or regulation authorizes the division of family services to, by rule, exclude the income or resources of a parent or parents of a person under the age of eighteen and such exclusion of income or resources can be limited to such parent or parents, then notwithstanding the provisions of section 208.010:

(a) The division may by rule exclude such income or resources in determining such person's eligibility for permanent and total disability benefits; and

(b) Eligibility standards for permanent and total disability benefits shall not be limited by age;

(26) Within thirty days of the effective date of an initial appropriation authorizing medical assistance on behalf of "medically needy" individuals for whom federal reimbursement is available [under] **pursuant to** 42 U.S.C. 1396a (a)(10)(c), the department of social services shall submit an amendment to the Medicaid state plan to provide medical assistance on behalf of, at a minimum, an individual described in subclause (I) or (II) of clause 42 U.S.C. 1396a (a)(10)(C)(ii).

(27) All persons who would be determined eligible for old age assistance benefits or permanent and total disability benefits, under the eligibility standards in effect December 31, 1973, and whose income is less than or equal to one hundred percent of the federal poverty level established by the Department of Health and Human Services or its successor; as authorized under 1902(m)(1) of the federal Social Security Act or less restrictive standards as established by rule of the division of family services.

2. The department of social services shall expand eligibility under the Medicaid program by increasing the current asset limits to five thousand dollars for a single person and seven thousand dollars for a married couple. The department shall apply to the United States Secretary of Health and Human Services for any necessary waivers or amendments to current waivers to increase such asset limits.

3. Rules and regulations to implement this section shall be promulgated in accordance with section 431.064, RSMo, and chapter 536, RSMo. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

[3.] 4. After December 31, 1973, and before April 1, 1990, any family eligible for assistance pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the last six months immediately preceding the month in which such family became ineligible for such assistance because of increased income from employment shall, while a member of such family is employed, remain eligible for medical assistance for four calendar months following the month in which such family would otherwise be determined to be ineligible for such assistance because of income and resource limitation. After April 1, 1990, any family receiving aid pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the six months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of employment or income from employment of the caretaker relative, shall remain eligible for medical assistance for six calendar months following the month of such ineligibility as long as such family includes a child as provided in 42 U.S.C. 1396r-6. Each family which has received such medical assistance during the entire six-month period described in this section and which meets reporting requirements and income tests established by the division and continues to include a child as provided in 42 U.S.C. 1396r-6 shall receive medical assistance without fee for an additional six

210 months. The division of medical services may provide by rule the scope of medical assistance
211 coverage to be granted to such families.

212 [4.] 5. For purposes of section 1902(1), (10) of Title XIX of the federal Social Security
213 Act, as amended, any individual who, for the month of August, 1972, was eligible for or was
214 receiving aid or assistance pursuant to the provisions of Titles I, X, XIV, or Part A of Title IV
215 of such act and who, for such month, was entitled to monthly insurance benefits [under]
216 **pursuant to** Title II of such act, shall be deemed to be eligible for such aid or assistance for such
217 month thereafter prior to October, 1974, if such individual would have been eligible for such aid
218 or assistance for such month had the increase in monthly insurance benefits under Title II of such
219 act resulting from enactment of Public Law 92-336 amendments to the federal Social Security
220 Act (42 U.S.C. 301 et seq.), as amended, not been applicable to such individual.

221 [5.] 6. When any individual has been determined to be eligible for medical assistance,
222 such medical assistance will be made available to him for care and services furnished in or after
223 the third month before the month in which he made application for such assistance if such
224 individual was, or upon application would have been, eligible for such assistance at the time such
225 care and services were furnished; provided, further, that such medical expenses remain unpaid.

208.152. 1. Benefit payments for medical assistance shall be made on behalf of those
2 eligible needy persons who are unable to provide for it in whole or in part, with any payments
3 to be made on the basis of the reasonable cost of the care or reasonable charge for the services
4 as defined and determined by the division of medical services, unless otherwise hereinafter
5 provided, for the following:

6 (1) Inpatient hospital services, except to persons in an institution for mental diseases who
7 are under the age of sixty-five years and over the age of twenty-one years; provided that the
8 division of medical services shall provide through rule and regulation an exception process for
9 coverage of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile
10 professional activities study (PAS) or the medicaid children's diagnosis length-of-stay schedule;
11 and provided further that the division of medical services shall take into account through its
12 payment system for hospital services the situation of hospitals which serve a disproportionate
13 number of low-income patients;

14 (2) All outpatient hospital services, payments therefor to be in amounts which represent
15 no more than eighty percent of the lesser of reasonable costs or customary charges for such
16 services, determined in accordance with the principles set forth in Title XVIII A and B, Public
17 Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. 301, et seq.), but the
18 division of medical services may evaluate outpatient hospital services rendered under this section
19 and deny payment for services which are determined by the division of medical services not to
20 be medically necessary, in accordance with federal law and regulations;

21 (3) Laboratory and X-ray services;

22 (4) Nursing home services for recipients, except to persons in an institution for mental
23 diseases who are under the age of sixty-five years, when residing in a hospital licensed by the
24 department of health or a nursing home licensed by the division of aging or appropriate licensing
25 authority of other states or government-owned and -operated institutions which are determined
26 to conform to standards equivalent to licensing requirements in Title XIX, of the federal Social
27 Security Act (42 U.S.C. 301, et seq.), as amended, for nursing facilities. **The division of**
28 **medical services shall remit to a licensed nursing home operator the Medicaid payment for**
29 **a newly admitted Medicaid resident in a licensed long term care facility within forty-five**
30 **days of the resident's date of admission.** The division of medical services may recognize
31 through its payment methodology for nursing facilities those nursing facilities which serve a high
32 volume of medicaid patients. The division of medical services when determining the amount
33 of the benefit payments to be made on behalf of persons under the age of twenty-one in a nursing
34 facility may consider nursing facilities furnishing care to persons under the age of twenty-one
35 as a classification separate from other nursing facilities;

36 (5) Nursing home costs for recipients of benefit payments [under] **pursuant to**
37 subdivision (4) of this section for those days, which shall not exceed twelve per any period of
38 six consecutive months, during which the recipient is on a temporary leave of absence from the
39 hospital or nursing home, provided that no such recipient shall be allowed a temporary leave of
40 absence unless it is specifically provided for in his plan of care. As used in this subdivision, the
41 term "temporary leave of absence" shall include all periods of time during which a recipient is
42 away from the hospital or nursing home overnight because he **or she** is visiting a friend or
43 relative;

44 (6) Physicians' services, whether furnished in the office, home, hospital, nursing home,
45 or elsewhere;

46 (7) Dental services;

47 (8) Services of podiatrists as defined in section 330.010, RSMo;

48 (9) Drugs and medicines when prescribed by a licensed physician, dentist, or podiatrist;

49 (10) Emergency ambulance services and, effective January 1, 1990, medically necessary
50 transportation to scheduled, physician-prescribed nonelective treatments. The department of
51 social services may conduct demonstration projects related to the provision of medically
52 necessary transportation to recipients of medical assistance under this chapter. Such
53 demonstration projects shall be funded only by appropriations made for the purpose of such
54 demonstration projects. If funds are appropriated for such demonstration projects, the
55 department shall submit to the general assembly a report on the significant aspects and results
56 of such demonstration projects;

57 (11) Early and periodic screening and diagnosis of individuals who are under the age of
58 twenty-one to ascertain their physical or mental defects, and health care, treatment, and other
59 measures to correct or ameliorate defects and chronic conditions discovered thereby. Such
60 services shall be provided in accordance with the provisions of section 6403 of P.L.53 101-239
61 and federal regulations promulgated thereunder;

62 (12) Home health care services;

63 (13) Optometric services as defined in section 336.010, RSMo;

64 (14) Family planning as defined by federal rules and regulations; provided, however, that
65 such family planning services shall not include abortions unless such abortions are certified in
66 writing by a physician to the medicaid agency that, in [his] **the physician's** professional
67 judgment, the life of the mother would be endangered if the fetus were carried to term;

68 (15) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing
69 aids, and wheelchairs;

70 (16) Inpatient psychiatric hospital services for individuals under age twenty-one as
71 defined in Title XIX of the federal Social Security Act (42 U.S.C. 1396d, et seq.);

72 (17) Outpatient surgical procedures, including presurgical diagnostic services performed
73 in ambulatory surgical facilities which are licensed by the department of health of the state of
74 Missouri; except, that such outpatient surgical services shall not include persons who are eligible
75 for coverage [under] **pursuant to** Part B of Title XVIII, Public Law 89-97, 1965 amendments
76 to the federal Social Security Act, as amended, if exclusion of such persons is permitted [under]
77 **pursuant to** Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security Act,
78 as amended;

79 (18) Personal care services which are medically oriented tasks having to do with a
80 person's physical requirements, as opposed to housekeeping requirements, which enable a person
81 to be treated by his **or her** physician on an outpatient, rather than on an inpatient or residential
82 basis in a hospital, intermediate care facility, or skilled nursing facility. Personal care services
83 shall be rendered by an individual not a member of the recipient's family who is qualified to
84 provide such services where the services are prescribed by a physician in accordance with a plan
85 of treatment and are supervised by a licensed nurse. Persons eligible to receive personal care
86 services shall be those persons who would otherwise require placement in a hospital,
87 intermediate care facility, or skilled nursing facility. Benefits payable for personal care services
88 shall not exceed for any one recipient one hundred percent of the average statewide charge for
89 care and treatment in an intermediate care facility for a comparable period of time;

90 (19) Mental health services. The state plan for providing medical assistance [under]
91 **pursuant to** Title XIX of the Social Security Act, 42 U.S.C. 301, as amended, shall include the
92 following mental health services when such services are provided by community mental health

93 facilities operated by the department of mental health or designated by the department of mental
94 health as a community mental health facility or as an alcohol and drug abuse facility. The
95 department of mental health shall establish by administrative rule the definition and criteria for
96 designation as a community mental health facility and for designation as an alcohol and drug
97 abuse facility. Such mental health services shall include:

98 (a) Outpatient mental health services including preventive, diagnostic, therapeutic,
99 rehabilitative, and palliative interventions rendered to individuals in an individual or group
100 setting by a mental health professional in accordance with a plan of treatment appropriately
101 established, implemented, monitored, and revised under the auspices of a therapeutic team as a
102 part of client services management;

103 (b) Clinic mental health services including preventive, diagnostic, therapeutic,
104 rehabilitative, and palliative interventions rendered to individuals in an individual or group
105 setting by a mental health professional in accordance with a plan of treatment appropriately
106 established, implemented, monitored, and revised under the auspices of a therapeutic team as a
107 part of client services management;

108 (c) Rehabilitative mental health and alcohol and drug abuse services including
109 preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions rendered to
110 individuals in an individual or group setting by a mental health or alcohol and drug abuse
111 professional in accordance with a plan of treatment appropriately established, implemented,
112 monitored, and revised under the auspices of a therapeutic team as a part of client services
113 management. As used in this section, "mental health professional" and "alcohol and drug abuse
114 professional" shall be defined by the department of mental health pursuant to duly promulgated
115 rules. With respect to services established by this subdivision, the department of social services,
116 division of medical services, shall enter into an agreement with the department of mental health.
117 Matching funds for outpatient mental health services, clinic mental health services, and
118 rehabilitation services for mental health and alcohol and drug abuse shall be certified by the
119 department of mental health to the division of medical services. The agreement shall establish
120 a mechanism for the joint implementation of the provisions of this subdivision. In addition, the
121 agreement shall establish a mechanism by which rates for services may be jointly developed;

122 (20) Comprehensive day rehabilitation services beginning early posttrauma as part of a
123 coordinated system of care for individuals with disabling impairments. Rehabilitation services
124 must be based on an individualized, goal-oriented, comprehensive and coordinated treatment
125 plan developed, implemented, and monitored through an interdisciplinary assessment designed
126 to restore an individual to optimal level of physical, cognitive and behavioral function. The
127 division of medical services shall establish by administrative rule the definition and criteria for
128 designation of a comprehensive day rehabilitation service facility, benefit limitations and

129 payment mechanism;

130 (21) Hospice care. As used in this subsection, the term "hospice care" means a
131 coordinated program of active professional medical attention within a home, outpatient and
132 inpatient care which treats the terminally ill patient and family as a unit, employing a medically
133 directed interdisciplinary team. The program provides relief of severe pain or other physical
134 symptoms and supportive care to meet the special needs arising out of physical, psychological,
135 spiritual, social and economic stresses which are experienced during the final stages of illness,
136 and during dying and bereavement and meets the medicare requirements for participation as a
137 hospice as are provided in 42 CFR Part 418. Beginning July 1, 1990, the rate of reimbursement
138 paid by the division of medical services to the hospice provider for room and board furnished
139 by a nursing home to an eligible hospice patient shall not be less than ninety-five percent of the
140 rate of reimbursement which would have been paid for facility services in that nursing home
141 facility for that patient, in accordance with subsection (c) of section 6408 of P.L. 101-239
142 (Omnibus Budget Reconciliation Act of 1989);

143 (22) Such additional services as defined by the division of medical services to be
144 furnished under waivers of federal statutory requirements as provided for and authorized by the
145 federal Social Security Act (42 U.S.C. 301, et seq.) subject to appropriation by the general
146 assembly;

147 (23) Beginning July 1, 1990, the services of a certified pediatric or family nursing
148 practitioner to the extent that such services are provided in accordance with chapter 335, RSMo,
149 and regulations promulgated thereunder, regardless of whether the nurse practitioner is
150 supervised by or in association with a physician or other health care provider;

151 (24) Subject to appropriations, the department of social services shall conduct
152 demonstration projects for nonemergency, physician-prescribed transportation for pregnant
153 women who are recipients of medical assistance [under] **pursuant to** this chapter in counties
154 selected by the director of the division of medical services. The funds appropriated pursuant to
155 this subdivision shall be used for the purposes of this subdivision and for no other purpose. The
156 department shall not fund such demonstration projects with revenues received for any other
157 purpose. This subdivision shall not authorize transportation of a pregnant woman in active labor.
158 The division of medical services shall notify recipients of nonemergency transportation services
159 [under] **pursuant to** this subdivision of such other transportation services which may be
160 appropriate during active labor or other medical emergency;

161 (25) Nursing home costs for recipients of benefit payments [under] **pursuant to**
162 subdivision (4) of this subsection to reserve a bed for the recipient in the nursing home during
163 the time that the recipient is absent due to admission to a hospital for services which cannot be
164 performed on an outpatient basis, subject to the provisions of this subdivision:

165 (a) The provisions of this subdivision shall apply only if:
166 a. The occupancy rate of the nursing home is at or above ninety-seven percent of
167 medicaid certified licensed beds, according to the most recent quarterly census provided to the
168 division of aging which was taken prior to when the recipient is admitted to the hospital; and
169 b. The patient is admitted to a hospital for a medical condition with an anticipated stay
170 of three days or less;
171 (b) The payment to be made [under] **pursuant to** this subdivision shall be provided for
172 a maximum of three days per hospital stay;
173 (c) For each day that nursing home costs are paid on behalf of a recipient pursuant to this
174 subdivision during any period of six consecutive months such recipient shall, during the same
175 period of six consecutive months, be ineligible for payment of nursing home costs of two
176 otherwise available temporary leave of absence days provided [under] **pursuant to** subdivision
177 (5) of this subsection; and
178 (d) The provisions of this subdivision shall not apply unless the nursing home receives
179 notice from the recipient or the recipient's responsible party that the recipient intends to return
180 to the nursing home following the hospital stay. If the nursing home receives such notification
181 and all other provisions of this subsection have been satisfied, the nursing home shall provide
182 notice to the recipient or the recipient's responsible party prior to release of the reserved bed.
183 2. Benefit payments for medical assistance for surgery as defined by rule duly
184 promulgated by the division of medical services, and any costs related directly thereto, shall be
185 made only when a second medical opinion by a licensed physician as to the need for the surgery
186 is obtained prior to the surgery being performed.
187 3. The division of medical services may require any recipient of medical assistance to
188 pay part of the charge or cost, as defined by rule duly promulgated by the division of medical
189 services, for dental services, drugs and medicines, optometric services, eye glasses, dentures,
190 hearing aids, and other services, to the extent and in the manner authorized by Title XIX of the
191 federal Social Security Act (42 U.S.C. 1396, et seq.) and regulations thereunder. When
192 substitution of a generic drug is permitted by the prescriber according to section 338.056, RSMo,
193 and a generic drug is substituted for a name brand drug, the division of medical services may not
194 lower or delete the requirement to make a copayment pursuant to regulations of Title XIX of the
195 federal Social Security Act. A provider of goods or services described [under] **pursuant to** this
196 section must collect from all recipients the partial payment that may be required by the division
197 of medical services under authority granted herein, if the division exercises that authority, to
198 remain eligible as a provider. Any payments made by recipients [under] **pursuant to** this section
199 shall be in addition to, and not in lieu of, any payments made by the state for goods or services
200 described herein.

201 4. The division of medical services shall have the right to collect medication samples
202 from recipients in order to maintain program integrity.

203 5. Reimbursement for obstetrical and pediatric services [under] **pursuant to** subdivision
204 (6) of subsection 1 of this section shall be timely and sufficient to enlist enough health care
205 providers so that care and services are available under the state plan for medical assistance at
206 least to the extent that such care and services are available to the general population in the
207 geographic area, as required [under] **pursuant to** subparagraph (a)(30)(A) of 42 U.S.C. 1396a
208 and federal regulations promulgated thereunder.

209 6. Beginning July 1, 1990, reimbursement for services rendered in federally funded
210 health centers shall be in accordance with the provisions of subsection 6402(c) and section 6404
211 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations
212 promulgated thereunder.

213 7. Beginning July 1, 1990, the department of social services shall provide notification
214 and referral of children below age five, and pregnant, breast-feeding, or postpartum women who
215 are determined to be eligible for medical assistance [under] **pursuant to** section 208.151 to the
216 special supplemental food programs for women, infants and children administered by the
217 department of health. Such notification and referral shall conform to the requirements of section
218 6406 of P.L. 101-239 and regulations promulgated thereunder.

219 8. Providers of long-term care services shall be reimbursed for their costs in accordance
220 with the provisions of section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. 1396a, as
221 amended, and regulations promulgated thereunder.

222 9. Reimbursement rates to long-term care providers with respect to a total change in
223 ownership, at arm's length, for any facility previously licensed and certified for participation in
224 the medicaid program shall not increase payments in excess of the increase that would result
225 from the application of section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C. 1396a
226 (a)(13)(C).

227 10. The department of social services, division of medical services, may enroll qualified
228 residential care facilities, as defined in chapter 198, RSMo, as medicaid personal care providers.

210.903. 1. To protect children and the elderly in this state, and to promote family and
2 community safety by providing information concerning family caregivers, there is hereby
3 established within the department of health a "Family Care Safety Registry and Access Line"
4 which shall be available by January 1, 2001.

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

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

9 (2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to
10 210.183;

11 (3) The division of aging's employee disqualification list pursuant to section [660.315]
12 **187.080**, RSMo;

13 (4) Foster parent licensure denials, revocations and suspensions pursuant to section
14 210.496;

15 (5) Child-care facility license denials, revocations and suspensions pursuant to sections
16 210.201 to 210.259; [and]

17 (6) Residential living facility and nursing home license denials, revocations, suspensions
18 and probationary status pursuant to chapter 198, RSMo[.]; and

19 **(7) The employee disqualification list maintained by the department of mental**
20 **health pursuant to section 630.170, RSMo.**

210.909. 1. Upon submission of a completed registration form by a child-care worker
2 or elder-care worker, the department, in coordination with the department of social services,
3 shall:

4 (1) Determine if a probable cause finding of child abuse or neglect involving the
5 applicant has been recorded pursuant to section 210.145;

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

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

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

14 (5) If the background check involves a provider, determine if a facility has been refused
15 licensure or has experienced licensure suspension, revocation or probationary status pursuant to
16 sections 210.201 to 210.259 or chapter 198, RSMo[.]; and

17 **(6) Determine if the applicant has been placed on the employee disqualification list**
18 **maintained by the department of mental health pursuant to section 630.170, RSMo.**

19 2. Upon completion of the background check described in subsection 1 of this section,
20 the department shall include information in the registry for each registrant as to whether any
21 felony convictions, employee disqualification listings pursuant to [section 660.315] **section**
22 **187.080, RSMo, and section 630.170**, RSMo, probable cause findings, pleas of guilty or nolo
23 contendere, or license denial, revocation or suspension have been documented through the
24 records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

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

210.915. The department of corrections, the department of public safety, **the**
2 **department of mental health** and the department of social services shall collaborate with the
3 department to compare records on child-care and elder-care workers, and the records of persons
4 with criminal convictions and the background checks pursuant to subdivisions (1) to [(6)] **(7)** of
5 subsection 2 of section 210.903, and to enter into any interagency agreements necessary to
6 facilitate the receipt of such information and the ongoing updating of such information. The
7 department, in coordination with the department of social services, shall promulgate rules and
8 regulations concerning such updating, including subsequent background reviews as listed in
9 subsection 1 of section 210.909.

210.933. **1. Until January 1, 2002**, for any elder-care worker listed in the registry or
2 who has submitted the registration form as required by sections 210.900 to 210.936, an elder-
3 care provider may access the registry in lieu of the requirements established pursuant to section
4 [660.315] **187.080**, RSMo, or to subsections 3, 4 and 5 of section [660.317] **187.084**, RSMo.

5 **2. Effective January 1, 2002, elder-care providers subject to the provisions of**
6 **section 187.084, RSMo, shall access the registry to satisfy the employee disqualification**
7 **provisions specified therein.**

210.936. For purposes of providing background information pursuant to sections
2 210.900 to 210.936, reports and related information pursuant to sections [198.070 and] **187.020**
3 **to 187.028, 187.050 and 187.080, RSMo, section 198.090, RSMo, and sections 210.109 to**
4 **210.183 [and sections 660.300 to 660.315], RSMo, shall be deemed public records.**

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

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

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

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty

15 or nolo contendere, pursuant to criminal prosecution [under] **pursuant to** the laws of any state
16 or of the United States, for any offense reasonably related to the qualifications, functions or
17 duties of any profession licensed or regulated [under] **pursuant to** this chapter, for any offense
18 an essential element of which is fraud, dishonesty or an act of violence, or for any offense
19 involving moral turpitude, whether or not sentence is imposed;

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

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

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

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

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

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

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

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

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

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

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

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

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

54 5. Upon a finding by the administrative hearing commission that the grounds, provided
55 in subsection 2 of this section, for disciplinary action are met, the board may, singly or in
56 combination, place upon probation, suspend or revoke a certificate of registration or authority,
57 permit or license.

**660.030. 1. No legally recognized privilege, except between attorney and client,
2 shall constitute grounds for failure to report as required or permitted by sections 187.020,
3 187.050 and 187.080 to 187.087, RSMo, and sections 660.250 to 660.295, or to refuse to
4 cooperate fully with or refuse access to records by the department in any of its
5 investigations or activities initiated pursuant to sections 187.020, 187.050 and 187.080 to
6 187.087, RSMo, or sections 660.250 to 660.295, or to refuse to give or receive evidence in
7 any judicial proceeding relating to the likelihood of harm to an eligible adult, as defined
8 in section 660.250.**

9 **2. Notwithstanding any other provision of law to the contrary, in any action
10 brought by the department pursuant to any chapter relating to the care and protection of
11 an eligible adult, the department and any of its personnel shall have access to all medical
12 and mental health records of any such eligible adult regardless of the institution, facility
13 or entity in possession of such records.**

 660.050. 1. The "Division of Aging" is hereby created and established as a division of
2 the department of social services. The division shall aid and assist the elderly and low-income
3 handicapped adults living in the state of Missouri to secure and maintain maximum economic
4 and personal independence and dignity. The division shall regulate adult long-term care facilities
5 [under] **pursuant to** the laws of this state and rules and regulations of federal and state agencies,
6 to safeguard the lives and rights of residents in these facilities.

7 2. In addition to its duties and responsibilities enumerated [under] **pursuant to** other
8 provisions of law, the division shall:

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

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

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

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

- 17 (5) Serve as liaison between the department of social services and the Federal Health
18 Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the United
19 States Department of Health and Human Services;
- 20 (6) Conduct medical review (inspections of care) activities such as utilization reviews,
21 independent professional reviews, and periodic medical reviews to determine medical and social
22 needs for the purpose of eligibility for Title XIX, and for level of care determination;
- 23 (7) Certify long-term care facilities for participation in the Title XIX program;
- 24 (8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for
25 Supplemental Security Income recipients in long-term care facilities and serve as the liaison
26 between the Social Security Administration and the department of social services concerning
27 Supplemental Security Income beneficiaries;
- 28 (9) Review plans of proposed long-term care facilities before they are constructed to
29 determine if they meet applicable state and federal construction standards;
- 30 (10) Provide consultation to long-term care facilities in all areas governed by state and
31 federal regulations;
- 32 (11) Serve as the central state agency with primary responsibility for the planning,
33 coordination, development, and evaluation of policy, programs, and services for elderly persons
34 in Missouri consistent with the provisions of subsection 1 of this section and serve as the
35 designated state unit on aging, as defined in the Older Americans Act of 1965;
- 36 (12) With the advice of the governor's advisory council on aging, develop long-range
37 state plans for programs, services, and activities for elderly and handicapped persons. State plans
38 should be revised annually and should be based on area agency on aging plans, statewide
39 priorities, and state and federal requirements;
- 40 (13) Receive and disburse all federal and state funds allocated to the division and solicit,
41 accept, and administer grants, including federal grants, or gifts made to the division or to the
42 state for the benefit of elderly persons in this state;
- 43 (14) Serve, within government and in the state at large, as an advocate for elderly
44 persons by holding hearings and conducting studies or investigations concerning matters
45 affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to
46 assure their rights to apply for and receive services and to be given fair hearings when such
47 services are denied;
- 48 (15) Provide information and technical assistance to the governor's advisory council on
49 aging and keep the council continually informed of the activities of the division;
- 50 (16) After consultation with the governor's advisory council on aging, make
51 recommendations for legislative action to the governor and to the general assembly;
- 52 (17) Conduct research and other appropriate activities to determine the needs of elderly

53 persons in this state, including, but not limited to, their needs for social and health services, and
54 to determine what existing services and facilities, private and public, are available to elderly
55 persons to meet those needs;

56 (18) Maintain a clearinghouse for information related to the needs and interests of elderly
57 persons, including information on the Missouri care options program;

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

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

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

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

70 3. The division director, subject to the supervision of the director of the department of
71 social services, shall be the chief administrative officer of the division and shall exercise for the
72 division the powers and duties of an appointing authority [under] **pursuant to** chapter 36,
73 RSMo, to employ such administrative, technical and other personnel as may be necessary for the
74 performance of the duties and responsibilities of the division.

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

84 5. Any person hired by the department of social services after August 13, 1988, to
85 conduct or supervise inspections, surveys or investigations pursuant to chapter 198, RSMo, shall
86 complete at least one hundred hours of basic orientation regarding the inspection process and
87 applicable rules and statutes during the first six months of employment. Any such person shall
88 annually, on the anniversary date of employment, present to the department evidence of having

89 completed at least twenty hours of continuing education in at least two of the following
90 categories: communication techniques, skills development, resident care, or policy update. The
91 department of social services shall by rule describe the curriculum and structure of such
92 continuing education.

93 6. The division may issue and promulgate rules to enforce, implement and effectuate the
94 powers and duties established in sections [198.070 and] **187.020 to 187.028, 187.050 and**
95 **187.080 to 187.087, RSMo, section** 198.090, RSMo, and sections 660.050, 660.250 [and
96 660.300 to 660.320]. No rule or portion of a rule promulgated [under] **pursuant to** the authority
97 of this chapter and sections [198.070] **187.020 to 187.028** and 198.090, RSMo, shall become
98 effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter**
99 **536, RSMo.**

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

660.051. The division of aging shall provide through their Internet web site:

2 **(1) The most recent survey of every long-term care facility licensed in this state.**
3 **If such survey is in dispute, the survey shall not be posted on the web site until the facility's**
4 **response has been reviewed by the division;**

5 **(2) A link to the federal web site that provides a summary of facility surveys**
6 **conducted over the last three years; and**

7 **(3) Information on how to obtain a copy of a complete facility survey conducted**
8 **over the last three years.**

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

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

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

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

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

13 (d) Does not receive funding or **in-home** services through Medicaid or social services
14 block grant funding;

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

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

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

24 2. The tax credit allowed by this section shall **be refundable and shall** apply to any year
25 beginning after December 31, 1999.

26 3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
27 is created under the authority delegated in sections 660.050 to 660.057 shall become effective
28 only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
29 applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28,
30 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal
31 or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied
32 with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and
33 if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review,
34 to delay the effective date or to disapprove and annul a rule are subsequently held
35 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after
36 August 28, 1999, shall be invalid and void.

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

**660.071. 1. The division of aging shall create and distribute a publication that, to
2 the best of their ability, provides a listing of all public or private companies or
3 organizations providing services for older adults, including but not limited to adult day
4 care, respite care, in-home care services, services provided by the area agency on aging and
5 long-term care facilities operating in the state of Missouri. Such publication shall:**

6 **(1) List the companies, organizations and facilities by category and by region of the**
7 **state; and**

8 **(2) Include the services available through each company, organization and facility;**
9 **and**

10 **(3) Include a disclaimer that indicates that the division is providing information on**
11 **the availability of services throughout the state only and such publication should not be**

12 interpreted as a rating or endorsement of any such company, organization or facility; and
13 (4) Include information to consumers on where to obtain inspection and survey
14 information on listed companies, their licensure status and any other information that will
15 provide consumers with information regarding the quality of services offered by providers
16 of senior services; and

17 (5) Include the information in the current division of aging senior guide. Such
18 publication shall replace the current senior guide and funds currently appropriated for the
19 current senior guide shall be applied to the new publication.

20 2. The division of aging may contract for the production of such publication. Such
21 contract shall contain the following provisions:

22 (1) The publication shall be produced in a style and manner substantially similar
23 to the current official travel guide published by the division of tourism within the
24 department of economic development; and

25 (2) The publication shall contain advertising sufficient to cover the cost of
26 producing such publication over and above the current senior guide appropriation, but
27 shall not exceed thirty-five percent of the publication.

660.083. Pursuant to chapter 198, RSMo, when the department of social services
2 issues a license for or renews the existing license of a facility, as defined in section 198.006,
3 RSMo, the division of aging shall consider the compliance history of a facility and of the
4 facility's operator.

660.252. 1. All Medicaid participation agreements entered into between the
2 department of social services and in-home services provider agencies shall include a
3 requirement that all in-home services employees of such agencies receive training on
4 identification and prevention of elder abuse and neglect.

5 2. All Medicaid participation agreements entered into between the department of
6 social services and long-term care facilities shall include a requirement that such facilities
7 comply with the provisions of sections 660.600 to 660.608 regarding access to such facilities
8 by ombudsmen or representatives of the office of the state ombudsmen for long-term care
9 facility residents.

660.401. 1. The division of aging shall restructure the adult day care program
2 requirements to allow for programs that provide a basic level of care without the
3 rehabilitative services provided by a licensed professional therapist.

4 2. The division shall authorize additional reimbursement to providers for the
5 transportation of clients to and from their homes for adult day care programs.

6 3. To increase the participation of long-term care facilities in the adult day care
7 program, the division shall amend the rules and regulations regarding adult day care

8 **programs with existing long-term care facilities. The changes shall eliminate the**
9 **duplication of program requirements while continuing to ensure the care level and**
10 **appropriate direct care staffing for the protection of nursing home residents and adult day**
11 **care clients.**

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

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

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

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

22 5. Upon receipt of a report, the department shall initiate an investigation
23 within twenty-four hours and, as soon as possible during the course of the
24 investigation, shall notify the resident's next of kin or responsible party of the report
25 and the investigation and further notify them whether the report was substantiated or
26 unsubstantiated. As provided in section 565.186, RSMo, substantiated reports of
27 elder abuse shall be promptly reported by the department to the appropriate law
28 enforcement agency and prosecutor.

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

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

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

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

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

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

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

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

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

2 [565.188. 1. When any physician, medical examiner, coroner, dentist,
3 chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic
4 personnel engaged in examination, care or treatment of persons, or other health
practitioners, psychologists, mental health professional, social worker, adult day care

center worker, nursing home worker, probation or parole officer, Christian Science practitioner, peace officer or law enforcement official, or other person with responsibility for the care of a person sixty years of age or older has reasonable cause to suspect that such a person has been subjected to abuse or neglect or observes such a person being subjected to conditions or circumstances which would reasonably result in abuse or neglect, he shall immediately report or cause a report to be made to the department in accordance with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes aware of circumstances which may reasonably be expected to be the result of or result in abuse or neglect may report to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 occurred, may report such information to the department.

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

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

15 4. Upon receipt of a report, the department shall initiate an investigation.

16 5. If the investigation indicates probable misappropriation of property or
17 funds, or falsification of any documents for service delivery of an in-home services
18 client, the investigator shall refer the complaint together with his report to the
19 department director or his designee for appropriate action.

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

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

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

30 9. No person who directs or exercises any authority in an in-home services
31 provider agency shall harass, dismiss or retaliate against an in-home services client
32 or employee because he or any member of his family has made a report of any
33 violation or suspected violation of laws, ordinances or regulations applying to the
34 in-home services provider agency or any in-home services employee which he has
35 reasonable cause to believe has been committed or has occurred.

36 10. The department shall maintain the employee disqualification list and
37 place on the employee disqualification list the names of any persons who have been
38 finally determined by the department to, pursuant to section 660.315, have
39 misappropriated any property or funds, or falsified any documents for service
40 delivery of an in-home services client while employed by an in-home services
41 provider agency.]

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

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

6 allegation;

7 (2) His name will be included in the employee disqualification list of the
8 department;

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

11 (4) His rights and the procedure to challenge the allegation.

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

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

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

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

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

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

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

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

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

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

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

59 (4) Whether the person has previously been listed on the employee
60 disqualification list;

61 (5) Any mitigating circumstances; and

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

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

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

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

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

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

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

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

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

the employee disqualification list.

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

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

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

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

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

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

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

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

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

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

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

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

41 6. An applicant who knowingly fails to disclose his criminal history as
42 required in subsection 5 of this section is guilty of a class A misdemeanor. A
43 provider is guilty of a class A misdemeanor if the provider knowingly hires a person
44 to have contact with patients or residents and the person has been convicted of, pled
45 guilty to or nolo contendere in this state or any other state or has been found guilty
46 of a crime, which if committed in Missouri would be a class A or B felony violation
47 of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section
48 198.070, RSMo, or section 568.020, RSMo.

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

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

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

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

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

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

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

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

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

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

**Section 1. Any claimant aggrieved by a decision of the director of the division of
2 family services made pursuant to section 208.080, RSMo, who prevails upon appeal
3 pursuant to section 208.100, RSMo, or section 208.110, RSMo, may petition the court to
4 receive an award of reasonable attorney's fees, court costs and expenses. The court may
5 award such reasonable attorney's fees, court costs and expenses, payable by the director
6 of the division of family services to the claimant, if the court finds that the position of the
7 state was not substantially justified.**

Section B. The provisions of section 210.936 of this act shall expire on January 1, 2004.

Section C. Because immediate action is necessary to ensure the safety of the elderly
2 section 187.084 of section A of this act is deemed necessary for the immediate preservation of
3 the public health, welfare, peace and safety, and is hereby declared to be an emergency act within
4 the meaning of the constitution, and section 187.084 of section A of this act shall be in full force
5 and effect upon its passage and approval.