

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE BILL NO. 349
91ST GENERAL ASSEMBLY

Reported from the Committee on Pensions and General Laws, May 11, 2001, with recommendation that the Senate Committee Substitute do pass.

0027S.08C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 191.900, 191.910, 198.012, 198.026, 198.029, 198.032, 198.067, 198.070, 198.082, 198.090, 198.526, 198.532, 208.010, 208.151, 210.025, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.300, 660.305, 660.315, 660.317, 660.320, 660.600 and 660.603, RSMo 2000, and to enact in lieu thereof fifty-three new sections relating to protection of the elderly, with penalty provisions and an effective date for a certain section.

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, 198.029, 198.032, 198.067, 198.070, 198.082, 198.090, 198.526, 198.532, 208.010, 208.151, 210.025, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.933, 210.936, 344.050, 565.186, 565.188, 565.190, 660.050, 660.300, 660.305, 660.315, 660.317, 660.320, 660.600 and 660.603, RSMo 2000, are repealed and fifty-three new sections enacted in lieu thereof, to be known as sections 187.010, 187.020, 187.024, 187.028, 187.030, 187.034, 187.050, 187.080, 187.084,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, 187.090, 187.102, 191.900, 191.910, 198.012, 198.026, 198.029, 198.030, 198.032, 198.067, 198.068, 198.082, 198.090, 198.526, 198.532, 208.010, 208.151, 210.025, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.933, 210.936, 344.050, 565.200, 660.026, 660.030, 660.050, 660.051, 660.071, 660.083, 660.252, 660.401, 660.600, 660.603, 660.604, 1 and 2, to read as follows:

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

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

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

7 (2) "Department", the Missouri department of social services;

8 (3) "Director", the director of the department of social services;

9 (4) "Eligible adult", a person sixty years of age or older, or an adult with a
10 handicap, as defined in section 660.053, RSMo, between the ages of eighteen and
11 fifty-nine who is unable to protect his or her own interests or adequately perform
12 or obtain services which are necessary to meet his or her essential human needs;

13 (5) "Facility" or "long-term care facility", any residential care facility I,
14 residential care facility II, intermediate care facility or skilled nursing facility;

15 (6) "Health care provider", any person delivering or purporting to deliver
16 any health care, including any employee, agent or other representative of such
17 person;

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

20 (8) "In-home services employee", a person employed by an in-home services
21 provider agency;

22 (9) "In-home services provider agency", a business entity under contract with
23 the department or a Medicaid participation agreement, or an agency licensed by
24 the department of health pursuant to sections 197.400 to 197.470, RSMo, that
25 employs persons to deliver any kind of services provided for eligible adults in their
26 private homes;

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

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

39 (12) "Likelihood of serious physical harm", one or more of the following:

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

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

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

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

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

61 (14) "Protective services", services provided by the state or other
62 governmental or private organizations or individuals which are necessary for the
63 eligible adult to meet his or her essential human needs;

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

69 (16) "Residential care facility I", any premises, other than a residential care
70 facility II, intermediate care facility or skilled nursing facility, which is utilized by
71 its owner, operator or manager to provide twenty-four hour care to three or more
72 residents, who are not related within the fourth degree of consanguinity or affinity
73 to the owner, operator or manager of the facility and who need or are provided
74 with shelter, board and with protective oversight, which may include storage and
75 distribution or administration of medications and care during short-term illness
76 or recuperation;

77 **(17) "Residential care facility II", any premises, other than a residential care**
78 **facility I, an intermediate care facility or a skilled nursing facility, which is utilized**
79 **by its owner, operator or manager to provide twenty-four hour accommodation,**
80 **board and care to three or more residents who are not related within the fourth**
81 **degree of consanguinity or affinity to the owner, operator, or manager of the**
82 **facility and who need or are provided with supervision of diets, assistance in**
83 **personal care, storage and distribution or administration of medications,**
84 **supervision of health care under the direction of a licensed physician and**
85 **protective oversight, including care during short-term illness or recuperation;**

86 **(18) "Skilled nursing facility", any premises, other than a residential care**
87 **facility I, a residential care facility II or an intermediate care facility, which is**
88 **utilized by its owner, operator or manager to provide for twenty-four hour**
89 **accommodation, board and skilled nursing care and treatment services to at least**
90 **three residents who are not related within the fourth degree of consanguinity or**
91 **affinity to the owner, operator or manager of the facility. Skilled nursing care and**
92 **treatment services are those services commonly performed by or under the**
93 **supervision of a registered professional nurse for individuals requiring twenty-four**
94 **hours a day care by licensed nursing personnel including acts of observation, care**
95 **and counsel of the aged, ill, injured or infirm, the administration of medications**
96 **and treatments as prescribed by a licensed physician or dentist, and other nursing**
97 **functions requiring substantial specialized judgment and skill.**

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

16 **2. In addition to those persons required to report pursuant to subsection 1**

17 of this section, any other person who believes or has cause to believe that a person
18 sixty years of age or older or an eligible adult, a resident of a long-term care facility
19 or an in-home services client has been abused or neglected may report such
20 information to the department.

21 3. Any person required in subsection 1 of this section to report or cause a
22 report to be made to the department who knowingly fails to make a report within
23 twenty-four hours as required in this section is guilty of a class A misdemeanor.

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

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

36 6. The administrator of a facility shall contact the local coroner immediately
37 upon the death of any resident of the facility and provide the coroner with an
38 outline of the circumstances regarding the death of such resident. A written report
39 containing the information provided to the local coroner shall be submitted to the
40 division of aging within one business day of the death of the resident. The division
41 shall maintain statistics on all such reports.

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

6 2. Upon receipt of a report pursuant to section 187.020 involving a resident
7 of a long-term care facility, the department shall initiate an investigation within
8 twenty-four hours and, as soon as possible during the course of the investigation,
9 shall notify the resident's next of kin or responsible party of the report and the
10 investigation and further notify them whether the report was substantiated or
11 unsubstantiated unless such resident's next of kin is the alleged perpetrator of the
12 abuse or neglect. For reports involving imminent harm, the division shall

13 commence an on-site investigation within twenty-four hours. As provided in
14 section 187.030, suspected reports of elder abuse shall be promptly reported by the
15 department to the appropriate law enforcement agency.

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

27 4. Reports shall be confidential except pursuant to lawful subpoena, as
28 provided in section 187.087, provided that:

29 (1) The information in subsections 1 and 3 of this section shall be reported
30 to any person with durable power of attorney for or any person with legal
31 guardianship for the resident who is the subject of the complaint and investigation;
32 and

33 (2) Such information shall not be reported to any person pursuant to
34 subdivision (1) of this subsection if such person is the alleged perpetrator of the
35 abuse or neglect, or if the resident objects.

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

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

50 7. Any person who knowingly abuses or neglects a resident of a facility shall
51 be guilty of a class D felony.

52 8. 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 187.080 to have
55 recklessly, knowingly or purposely abused or neglected a resident while employed
56 in any facility.

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

 187.028. 1. If a report is made pursuant to section 187.020 that involves an
2 eligible adult not residing in a facility, the report shall contain the names and
3 addresses of the eligible adult, information regarding the nature of the abuse or
4 neglect, the name of the complainant and any other information which may be
5 helpful in an investigation. In addition, if a report made pursuant to section
6 187.020 involves an eligible adult who is also an in-home services client, the report
7 shall also contain the names and addresses of the in-home services provider agency
8 and the in-home services employee.

9 2. Upon receipt of a report pursuant to section 187.020 involving the eligible
10 adult not residing in a facility, the department shall initiate a prompt and thorough
11 investigation.

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

25 4. Reports shall be confidential except pursuant to lawful subpoena, as

26 provided in section 187.087, provided that:

27 (1) The information in subsections 1 and 3 of this section shall be reported
28 to any person authorized pursuant to paragraph (h) of subdivision (5) of subsection
29 1 of section 198.088, any person with durable power of attorney for or any person
30 with legal guardianship for the eligible adult not residing in a facility who is the
31 subject of the abuse or neglect; and

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

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

38 6. No person, including any person who directs or exercises any authority
39 in an in-home services provider agency, shall harass, dismiss or retaliate against
40 an eligible adult not residing in a facility or an in-home services employee because
41 the eligible adult, employee or any member of his or her family has made a report
42 of any violation or suspected violation of laws, standards or regulations applying
43 to the in-home services provider agency or any in-home services employee which
44 the eligible adult, employee or family member thereof has reasonable cause to
45 believe has been committed or has occurred.

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

48 8. The department shall maintain the employee disqualification list and
49 place on the employee disqualification list the names of any persons who have been
50 finally determined by the department pursuant to section 187.080 to have
51 recklessly, knowingly or purposely abused or neglected an eligible adult not
52 residing in a facility while employed by an in-home services provider agency.

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

6 2. The division of aging and law enforcement agencies shall require training
7 and cross-training of all investigatory personnel and other persons as deemed
8 necessary regarding the proper handling of cases involving elder abuse. All
9 noninvestigatory personnel and volunteers for local area agencies on aging shall
10 be instructed on certain aspects of elder abuse investigations to ensure that such

11 personnel and volunteers are able to recognize potential cases of abuse or neglect,
12 take the necessary measures to preserve evidence and any other steps necessary
13 to properly handle elder abuse or neglect cases. Nothing in this subsection shall
14 be construed to require noninvestigatory personnel and volunteers to act in an
15 investigatory capacity in investigations of elder abuse or neglect. The division of
16 aging, in cooperation with law enforcement agencies, shall, by rule, develop a
17 checklist for division and law enforcement personnel to follow when investigating
18 possible elder abuse.

19 3. No rule or portion of a rule promulgated under the authority of this
20 section shall become effective unless it has been promulgated pursuant to chapter
21 536, RSMo.

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

187.050. 1. Any person having reasonable cause to believe that a
2 misappropriation of property or funds of an eligible adult not residing in a facility,
3 or the falsification of any documents verifying service delivery to such eligible
4 adult has occurred, shall 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, the eligible adult not residing in a facility, information
8 regarding the nature of the misappropriation or falsification, the name of the
9 complainant, and any other information which might be helpful in an investigation.

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

16 4. Upon receipt of a report, the department shall immediately initiate an
17 investigation and report information to appropriate law enforcement agencies.

18 5. If the investigation indicates probable misappropriation of property or
19 funds or falsification of any documents for service delivery of an eligible adult not

20 residing in a facility, the investigator shall refer the complaint together with the
21 investigator's report to the department director or the director's designee for
22 appropriate action.

23 **6. Reports shall be confidential except pursuant to lawful subpoena, as**
24 **provided in section 187.087, provided that:**

25 **(1) The information in subsections 3 and 6 of this section shall be reported**
26 **to any person authorized pursuant to paragraph (h) of subdivision (5) of subsection**
27 **1 of section 198.088, any person with durable power of attorney for or any person**
28 **with legal guardianship for the eligible adult not residing in a facility who is the**
29 **subject of the misappropriation or falsification; and**

30 **(2) Such information shall not be reported to any person pursuant to**
31 **subdivision (1) of this subsection if such person is the alleged perpetrator of the**
32 **misappropriation or falsification, or if the eligible adult not residing in a facility**
33 **objects.**

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

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

43 **9. No person shall harass, dismiss or retaliate against an eligible adult not**
44 **residing in a facility or an in-home services employee because the eligible adult,**
45 **employee or any member of his or her family has made a report of any violation or**
46 **suspected violation of laws, standards or regulations applying to the in-home**
47 **services provider agency or any in-home services employee which the eligible**
48 **adult, employee or family member thereof has reasonable cause to believe has been**
49 **committed or has occurred.**

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

187.080. 1. After an investigation and a determination has been made to

2 place a person's name on the employee disqualification list, that person shall be
3 notified in writing mailed to the person's last known address that:

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

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

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

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

12 2. 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
15 determined by the director or the director's designee, based upon the criteria
16 contained in subsections 9 and 10 of this section.

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

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

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

35 6. Upon the record made at the hearing, the director of the division of aging
36 shall determine all questions presented and shall determine whether the person
37 shall be listed on the employee disqualification list. The director of the division of
38 aging shall clearly state the reasons for his or her decision and shall include a

39 **statement of findings of fact and conclusions of law pertinent to the questions in**
40 **issue.**

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

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

52 **9. The following persons shall receive an automatic lifetime listing on the**
53 **employee disqualification list:**

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

57 **(2) Based on substantiated reports:**

58 **(a) Any person who intentionally or negligently inflicts serious physical**
59 **injury or causes the death of another person; or**

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

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

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

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

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

71 **(4) Whether the person has previously been listed on the employee**
72 **disqualification list;**

73 **(5) Any mitigating circumstances;**

74 **(6) Any aggravating circumstances; and**

75 **(7) Whether alternative sanctions resulting in conditions of continued**

76 employment are appropriate in lieu of placing a person's name on the employee
77 disqualification list. Such conditions of employment may include, but are not
78 limited to, additional training and employee counseling. Conditional employment
79 shall terminate upon the expiration of the designated length of time and the
80 person's submitting documentation which fulfills the division's requirements.

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

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

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

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

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

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

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

97 13. No person, corporation or association responsible for providing health
98 care service shall knowingly employ any person who is on the employee
99 disqualification list. Any such person, corporation or association, who declines to
100 employ or terminates a person whose name is listed in this section shall be immune
101 from suit by that person or anyone else acting for or in behalf of that person for the
102 failure to employ or for the termination of the person whose name is listed on the
103 employee disqualification list.

104 14. Any employer who is required to discharge an employee because the
105 employee was placed on a disqualification list maintained by the department of
106 social services after the date of hire shall not be charged for unemployment
107 insurance benefits based on wages paid to the employee for work prior to the date
108 of discharge, pursuant to section 288.100, RSMo.

109 15. Any person who has been listed on the employee disqualification list,
110 other than a person who has a lifetime listing, may request that the director
111 remove his or her name from the employee disqualification list. The request shall
112 be written and may not be made more than once every twelve months. The request

113 will be granted by the director upon a clear showing, by written submission only,
114 that the person will not commit additional acts of abuse, neglect, misappropriation
115 of the property or funds, or the falsification of any documents of service delivery
116 to an in-home services client. The director may make conditional the removal of
117 a person's name from the list on any terms that the director deems appropriate,
118 and failure to comply with such terms may result in the person's name being
119 relisted. The director's determination of whether to remove the person's name
120 from the list is not subject to appeal.

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

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

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

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

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

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

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

30 **5. An applicant for a position to have contact with patients or residents of**
31 **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**
38 **parole; and**

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

41 **6. An applicant who knowingly fails to disclose his or her criminal history**
42 **as 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 or**
44 **retains a person to have contact with patients or residents and the person has been**
45 **convicted of, pled guilty to or nolo contendere in this state or any other state or has**
46 **been found guilty of a crime, which if committed in Missouri would be a felony**
47 **stealing offense, child abuse or neglect, a felony violation of chapter 198, 334, 565,**
48 **566, 568, 569 or 573, RSMo, a violation of section 565.184, RSMo, or any violation of**
49 **subsection 3 of section 187.020 or section 568.020, RSMo, or the person or the**
50 **person's foster care license has been refused, suspended or revoked pursuant to**
51 **section 210.496, RSMo, if such refusal, suspension or revocation is related to care**
52 **or protection of children, or the person is disqualified for employment by the**
53 **department of mental health pursuant to section 630.170, RSMo.**

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

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

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

5 not be disclosed unless:

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

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

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

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

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

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

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

187.090. 1. The department of social services, in conjunction with the
2 department of health, shall provide the names of any person listed on the division
3 of aging employee disqualification list to other state departments upon request or
4 to any person, corporation or association who:

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

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

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

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

11 (5) Is an entity licensed pursuant to chapter 197, RSMo.

12 The department shall inform any person listed in this subsection who inquires of
13 the division of aging whether a particular name is on the list. The division may
14 require that such request be made in writing.

15 2. No person, corporation or association that receives the employee
16 disqualification list pursuant to this section shall knowingly employ any person
17 who is on the list. Any person, corporation or association who receives the list
18 pursuant to this section or any person responsible for providing health care service
19 who declines to employ or terminates a person whose name is listed in this section

20 **shall be immune from suit by such person or any individual acting on behalf of**
21 **such person for failure to employ or for the termination of the person whose name**
22 **is listed on the employee disqualification list.**

187.102. Pursuant to sections 187.010 to 187.102, the department of social
2 **services, the department of mental health and the department of health shall work**
3 **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:

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

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

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

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

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

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

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

19 (8) "Medical assistance program", [any program to provide or finance health care to
20 recipients which is established pursuant to title 42 of the United States Code, any successor
21 federal health insurance program, or a waiver granted thereunder. A medical assistance
22 program may be funded either solely by state funds or by state and federal funds jointly] **any**
23 **federal health care program, as defined in 42 U.S.C. Section 1320a-7b(f).** The term
24 "medical assistance program" shall include the medical assistance program provided by
25 section 208.151, RSMo, et seq., and any state agency or agencies administering all or any part
26 of such a program;

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

191.910. 1. The attorney general shall have authority to investigate alleged or
2 suspected violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028, RSMo,**

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

39 would constitute violations of sections 191.900 to 191.910, **or sections 187.020 to 187.028,**
40 **RSMo, if related to a violation of sections 191.900 to 191.910** in more than one state,
41 the attorney general shall have the authority to represent the state of Missouri in any plea
42 agreement which resolves all criminal prosecutions within and without the state, and such
43 agreement shall be binding on all state prosecutors.

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

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

75 [sections 660.300 and 660.305] **section 187.050**, RSMo, to the extent such provisions are
76 inconsistent or overlap.

198.012. 1. The provisions of **section 187.020, RSMo, and** sections 198.003 to
2 198.136 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
5 exclusively under such license and within the limits of such license, unless the activities and
6 services are or are held out as being activities or services normally provided by a licensed
7 facility [under] **pursuant to section 187.010, RSMo, and** sections 198.003 to 198.186,
8 198.200, 208.030, and 208.159, RSMo, except hospitals licensed [under] **pursuant to** the
9 provisions of chapter 197, 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
12 facility are physically attached to the acute care hospital; and provided further that the
13 department of health in promulgating rules, regulations and standards pursuant to section
14 197.080, RSMo, with respect to such facilities, shall establish requirements and standards for
15 such hospitals consistent with the intent of this chapter, **section 187.020**, and sections
16 198.067, [198.070,] 198.090, 198.093 and 198.139 to 198.180 shall apply to every residential
17 care facility II, intermediate care facility or skilled nursing facility regardless of physical
18 proximity to any other health care facility;

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

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

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

198.026. 1. Whenever a duly authorized representative of the department finds upon
2 an inspection of a facility that it is not in compliance with the provisions of sections 198.003
3 to 198.096 and the standards established thereunder, the operator or administrator shall be
4 informed of the deficiencies in an exit interview conducted with the operator or administrator

5 or his designee. The department shall inform the operator or administrator, in writing, of any
6 violation of a class I standard at the time the determination is made. A written report shall
7 be prepared of any deficiency for which there has not been prompt remedial action, and a copy
8 of such report and a written correction order shall be sent to the operator or administrator
9 by certified mail or other delivery service that provides a dated receipt of delivery at the
10 facility address within ten working days after the inspection, stating separately each
11 deficiency and the specific statute or 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
15 class III standards to request any conference and to submit a plan of correction for the
16 department's approval which contains specific dates for achieving compliance. Within five
17 working days after receiving a plan of correction regarding a violation of a class I standard
18 and within ten working days after receiving a plan of correction regarding a violation of a
19 class II or III standard, the department shall give its written approval or rejection of the
20 plan. If there was a violation of any class I standard, immediate corrective action shall be
21 taken by the operator or administrator and a written plan of correction shall be submitted to
22 the department. The department shall give its written approval or rejection of the plan and
23 if the plan is acceptable, a reinspection shall be conducted within twenty calendar days of the
24 exit interview to determine if deficiencies have been corrected. If there was a violation of any
25 class II standard and the plan of correction is acceptable, an unannounced reinspection shall
26 be conducted between forty and ninety calendar days from the date of the exit conference to
27 determine the status of all previously cited deficiencies. If there was a violation of class III
28 standards sufficient to establish that the facility was not in substantial compliance, an
29 unannounced reinspection shall be conducted within one hundred twenty days of the exit
30 interview to determine the status of previously identified deficiencies.

31 3. If, following the reinspection, the facility is found not in substantial compliance
32 with sections 198.003 to 198.096 and the standards established thereunder or the operator
33 is not correcting the noncompliance in accordance with the approved plan of correction, the
34 department shall issue a notice of noncompliance, which shall be sent by certified mail or
35 other delivery service that provides a dated receipt of delivery to each person disclosed to be
36 an owner or operator of the facility, according to the most recent information or documents
37 on file with the department.

38 4. The notice of noncompliance shall inform the operator or administrator that the
39 department may seek the imposition of any of the sanctions and remedies provided for in
40 section 198.067, or any other action authorized by law.

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

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

 198.029. The provisions of section 198.026 notwithstanding, whenever a duly
2 authorized representative of the department finds upon inspection of a licensed facility, and
3 the director of the department finds upon review, that the facility or the operator is not in
4 substantial compliance with a standard or standards the violations of which would present
5 either an imminent danger to the health, safety or welfare of any resident or a substantial
6 probability that death or serious physical harm would result and which is not immediately
7 corrected, the department shall:

8 (1) Give immediate written notice of the noncompliance to the operator, administrator
9 or person managing or supervising the conduct of the facility **and a copy of such notice to**
10 **the attorney general** at the time the noncompliance is found;

11 (2) Make public the fact that a notice of noncompliance has been issued to the
12 facility. Copies of the notice shall be sent to appropriate hospitals and social service agencies;

13 (3) Send a copy of the notice of noncompliance to the division of family services of the
14 department of social services, the department of mental health, and any other concerned
15 federal, state or local government agencies. The facility shall post in a conspicuous location
16 in the facility a copy of the notice of noncompliance and a copy of the most recent inspection
17 report.

198.030. 1. Every residential care facility I and residential care facility II
2 **shall meet or exceed the federal requirements relating to the posting of deficiencies**
3 **for federally certified skilled nursing facilities and intermediate care facilities.**

4 **2. Every facility shall have one regular state licensure inspection during any**
5 **twelve-month period.**

6 **3. One or more additional inspections must be conducted if:**

7 **(1) A facility receives a class I deficiency or a citation at F level or above on**

8 **the federal survey grid; or**

9 **(2) A facility fails to correct class II or class III deficiencies or citations at**
10 **the E level or below on the federal survey grid at the time of its first revisit after**
11 **an inspection or survey.**

12 **4. The term "inspection" as used in this section shall not include a revisit or**
13 **a complaint investigation or a survey conducted pursuant to federal survey and**
14 **certification process.**

15 **5. Nothing contained herein shall prohibit the department from making such**
16 **other inspections, announced or unannounced, as it deems necessary to carry out**
17 **the provisions of sections 198.003 to 198.036.**

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

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

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
12 the resident; and

13 (6) Appropriate committees of the general assembly and the state auditor, but only
14 to the extent of financial records which the operator is required to maintain pursuant to
15 sections 198.088 and 198.090.

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

24 3. The department shall maintain a central registry capable of receiving and
25 maintaining reports received in a manner that facilitates rapid access and recall of the
26 information reported, and of subsequent investigations and other relevant information. The

27 department shall electronically record any telephone report of suspected abuse and neglect
28 received by the department and such recorded reports shall be retained by the department
29 for a period of one year after recording.

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

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

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

15 3. The operator of any facility which has been cited with a violation of sections
16 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c),
17 or (d) of Section 1396r of Title 42 of the United States Code or the regulations established
18 pursuant thereto, is liable to the state for civil penalties of up to ten thousand dollars for each
19 day that the violations existed or continue to exist. Violations shall be presumed to continue
20 to exist from the time they are found until the time the division of aging finds them to have
21 been corrected. The amount of the penalty shall be determined as follows:

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

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

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

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

31 (5) For each specific class I violation by the same operator which has been cited
32 **previously** within the past twenty-four months and for each specific class II or III violation
33 by the same operator which has been cited **previously** within the past twelve months, double
34 the amount last imposed.

35 As used in this subdivision the term "violation" shall mean a breach of a specific state or
36 federal standard or statute which remains uncorrected and not in accord with the accepted
37 plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section
38 198.026 or the regulations established pursuant to Title 42 of the United States Code. A
39 judgment rendered against the operator of a facility pursuant to this subsection shall bear
40 interest as provided in subsection 1 of section 408.040, RSMo.

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

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

50 6. Penalties collected pursuant to this section shall be deposited in the division of
51 aging elderly home-delivered meals trust fund as established in section 660.078, RSMo. Such
52 penalties shall not be considered a charitable contribution for tax purposes.

53 7. To recover any civil penalty, the moving party shall prove by clear and convincing
54 evidence that the violation occurred.

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

61 9. The amount of any civil penalty assessed by the circuit court pursuant to this
62 section [shall] **may** be reduced by the amount of any civil monetary penalty which the
63 licensed operator of the facility may establish it has paid pursuant to the laws of the United
64 States for the breach of the same federal standards **and arising out of the same conduct**
65 for which the state action is brought.

66 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this

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

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

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate
2 care facility after January 1, 1980, shall have successfully completed a nursing assistant
3 training program approved by the department [or shall enroll in and begin the first available
4 approved training program which is scheduled to commence within ninety days of the date
5 of the nursing assistant's employment] **which shall be completed within one hundred
6 twenty days of employment.** Training programs shall be offered at a location most
7 reasonably accessible to the enrollees in each class. The program may be established **and
8 carried out** by the skilled nursing or intermediate care facility, by a professional
9 organization, or by the department, and training shall be given by the personnel of the
10 facility, by a professional organization, by the department, by any junior college or by the
11 vocational education department of any high school. **No program shall offer or provide
12 training pursuant to this section unless the department has approved the program
13 prior to the offering or provision of such training.**

14 2. As used in this section the term "nursing assistant" means an employee, including
15 a nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility
16 to provide or assist in the provision of direct resident health care services under the
17 supervision of a nurse licensed under the nursing practice law, chapter 335, RSMo. This
18 section shall not apply to any person otherwise licensed to perform health care services under
19 the laws of this state. It shall not apply to volunteers or to members of religious or fraternal
20 orders which operate and administer the facility, if such volunteers or members work without

21 compensation.

22 3. The training program after January 1, 1989, shall consist of at least the following:

23 (1) A training program consisting of at least seventy-five classroom hours of training
24 on basic nursing skills, clinical practice, resident safety and rights, the social and
25 psychological problems of residents, and the methods of handling and caring for mentally
26 confused residents such as those with Alzheimer's disease and related disorders, and one
27 hundred hours supervised and on-the-job training. The one hundred hours **shall be**
28 **completed within one hundred twenty days of employment and** may consist of normal
29 employment as **a nurse [assistants] assistant** under the supervision of a licensed nurse; and

30 (2) Continuing in-service training to assure continuing competency in existing and
31 new nursing skills. [All nursing assistants trained prior to January 1, 1989, shall attend, by
32 August 31, 1989, an entire special retraining program established by rule or regulation of the
33 department which shall contain information on methods of handling mentally confused
34 residents and which may be offered on premises by the employing facility.]

35 4. Nursing assistants who have not successfully completed the nursing assistant
36 training program prior to employment may begin duties as a nursing assistant only after
37 completing an initial twelve hours of basic orientation approved by the department and may
38 provide direct resident care only if under the general supervision of a licensed nurse prior to
39 completion of the seventy-five classroom hours of the training program.

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**
10 designee, or guardian in the case of an adjudged incompetent;

11 (3) Deposit any personal funds received from or on behalf of a resident in an account
12 separate from the facility's funds, except that an amount to be established by rule of the
13 division 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
15 or guardian, maintained on a current basis for each resident, with written receipts, for all
16 personal possessions and funds received by or deposited with the facility and for all
17 disbursements made to or on behalf of the resident;

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

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

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

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

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

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

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

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

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

88 5. Any operator who fails to maintain records or who fails to maintain any resident's
89 personal funds in an account separate from the facility's funds as required by this section

90 shall be guilty of a class C misdemeanor.

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

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

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

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

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

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

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

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

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

119 15. The department shall maintain the employee disqualification list and place on the
120 employee disqualification list the names of any persons who have been finally determined by
121 the department, pursuant to section **[660.315] 187.080**, RSMo, to have misappropriated any
122 property 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
2 at 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**
9 **employees of the division of aging on a need-to-know basis only. Any employee of**
10 **the division of aging who knowingly discloses the time of an unannounced**
11 **inspection in violation of this section is guilty of a class A misdemeanor and shall**
12 **have his or her employment 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
3 facility due to actions or the lack of actions taken by the facility shall be investigated within
4 thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure
5 the safety, protection and care of all residents of the facility likely to be affected by the alleged
6 action or inaction. Such investigation shall be in addition to the investigation requirements
7 for abuse and neglect reports pursuant to [section 198.070] **sections 187.020 to 187.028,**
8 **RSMo.** The division shall provide the results of all investigations in accordance with section
9 [660.320] **187.087, RSMo.** The division shall provide the results of such investigation in
10 writing to all parties to the complaint, and if requested, to any of the facility's residents, or
11 their family members or guardians. Complaints and written results will be readily available
12 for public access and review at the division of aging and at the long-term care
13 facility. Personal information identifying the resident will be blanked out, except in regard
14 to immediate family, the attorney-in-fact or the legal guardian of the resident in
15 question. This information will remain readily available for a period of time determined by
16 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
3 account all facts and circumstances surrounding the claimant, including his or her living
4 conditions, earning capacity, income and resources, from whatever source received, and if
5 from all the facts and circumstances the claimant is not found to be in need, assistance shall
6 be denied. In determining the need of a claimant, the costs of providing medical treatment
7 which may be furnished pursuant to sections 208.151 to 208.158 and 208.162 shall be
8 disregarded. The amount of benefits, when added to all other income, resources, support, and
9 maintenance shall provide such persons with reasonable subsistence compatible with decency
10 and health in accordance with the standards developed by the division of family services;
11 provided, when a husband and wife are living together, the combined income and resources

12 of both shall be considered in determining the eligibility of either or both. "Living together"
13 for the purpose of this chapter is defined as including a husband and wife separated for the
14 purpose of obtaining medical care or nursing home care, except that the income of a husband
15 or wife separated for such purpose shall be considered in determining the eligibility of his or
16 her spouse, only to the extent that such income exceeds the amount necessary to meet the
17 needs (as defined by rule or regulation of the division) of such husband or wife living
18 separately. In determining the need of a claimant in federally aided programs there shall be
19 disregarded such amounts per month of earned income in making such determination as shall
20 be required for federal participation by the provisions of the federal Social Security Act (42
21 U.S.C.A. 301 et seq.), or any amendments thereto. When federal law or regulations require
22 the exemption of other income or resources, the division of family services may provide by rule
23 or regulation the amount of income or resources to be 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
28 regulations, there shall be included (but subject to the exclusions pursuant to subdivisions
29 (4) and (5) of this subsection, and subsection 5 of this section) any resource or interest therein
30 owned by such individual or spouse within the twenty-four months preceding the initial
31 investigation, or at any time during which benefits are being drawn, if such individual or
32 spouse gave away or sold such resource or interest within such period of time at less than fair
33 market value of such resource or interest for the purpose of establishing eligibility for
34 benefits, including but not limited to benefits based on December, 1973, eligibility
35 requirements, as follows:

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

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

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

47 b. When the uncompensated value exceeds twelve thousand dollars, the resource shall

48 not be used in determining eligibility for more than sixty months;

49 (2) The provisions of subdivision (1) of subsection 2 of this section shall not apply to
50 a transfer, other than a transfer to claimant's spouse, made prior to March 26, 1981, when
51 the claimant furnishes convincing evidence that the uncompensated value of the disposed of
52 resource or any part thereof is no longer possessed or owned by the person to whom the
53 resource was transferred;

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

62 (4) Owns or possesses resources in the sum of [one thousand] **one thousand five**
63 **hundred** dollars or more; provided, however, that if such person is married and living with
64 spouse, he or she, or they, individually or jointly, may own resources not to exceed [two]
65 **three** thousand dollars; and provided further, that in the case of a temporary assistance for
66 needy families claimant, the provision of this subsection shall not apply. **The provisions of**
67 **this subdivision shall become effective July 1, 2002;**

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

76 (6) In the case of temporary assistance for needy families, if the parent, stepparent,
77 and child or children in the home owns or possesses property of any kind or character, or has
78 an interest in property for which he or she is a record or beneficial owner, the value of such
79 property, as determined by the division of family services and as allowed by federal law or
80 regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home
81 occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial
82 contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection
83 1 of section 436.053, RSMo, one automobile which shall not exceed a value set forth by federal

84 law or regulation and for a period not to exceed six months, such other real property which
85 the family is making a good-faith effort to sell, if the family agrees in writing with the division
86 of family services to sell such property and from the net proceeds of the sale repay the amount
87 of assistance received during such period. If the property has not been sold within six
88 months, or if eligibility terminates for any other reason, the entire amount of assistance paid
89 during such period shall be a debt due the state;

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

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

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

110 5. In determining the total property owned pursuant to subdivision (5) of subsection
111 2 of this section, or resources, of any person claiming or for whom public assistance is claimed,
112 there shall be disregarded any life insurance policy, or prearranged funeral or burial contract,
113 or any two or more policies or contracts, or any combination of policies and contracts, which
114 provides for the payment of one thousand five hundred dollars or less upon the death of any
115 of the following:

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

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

119 If the value of such policies exceeds one thousand five hundred dollars, then the total

120 value of such policies may be considered in determining resources; except that, in the case of
121 temporary assistance for needy families, there shall be disregarded any prearranged funeral
122 or burial contract, or any two or more contracts, which provides for the payment of one
123 thousand five hundred dollars or less per family member.

124 6. Beginning September 30, 1989, when determining the eligibility of institutionalized
125 spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided
126 for in section 208.151 and 42 U.S.C. Sections 1396a et seq., the division of family services
127 shall comply with the provisions of the federal statutes and regulations. As necessary, the
128 division shall by rule or regulation implement the federal law and regulations which shall
129 include but not be limited to the establishment of income and resource standards and
130 limitations. The division shall require:

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

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

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

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

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

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

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

155 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant

156 to the provisions of section 208.080.

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

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

170 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
2 and to comply with Title XIX, Public Law 89-97, 1965 amendments to the federal Social
3 Security Act (42 U.S.C. section 301 et seq.) as amended, the following needy persons shall be
4 eligible to 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
12 standards in effect December 31, 1973, or less restrictive standards as established by rule of
13 the division of family services, who are sixty-five years of age or over and are patients in state
14 institutions 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
17 1 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,
19 as 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

22 parental 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
26 or full payment for such care;

27 (9) All persons who were recipients of old age assistance benefits, aid to the
28 permanently and totally disabled, or aid to the blind benefits on December 31, 1973, and who
29 continue to meet the eligibility requirements, except income, for these assistance categories,
30 but who are no longer receiving such benefits because of the implementation of Title XVI of
31 the federal Social 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
47 of age. For children who have attained six years of age but have not attained nineteen years
48 of age, the division of family services shall use an income assessment methodology which
49 provides for eligibility when family income is equal to or less than equal to one hundred
50 percent of the federal poverty level established by the Department of Health and Human
51 Services, or its successor agency. As necessary to provide Medicaid coverage [under]
52 **pursuant to** this subdivision, the department of social services may revise the state Medicaid
53 plan to extend coverage [under] **pursuant to** 42 U.S.C. 1396a (a)(10)(A)(i)(III) to children
54 who have attained six years of age but have not attained nineteen years of age as permitted
55 by paragraph (2) of subsection (n) of 42 U.S.C. 1396d using a more liberal income assessment
56 methodology as authorized by paragraph (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
63 guideline for the applicable family size; and

64 (c) Children who have attained six years of age but have not attained nineteen years
65 of age with family income greater than one hundred percent of the federal poverty guideline
66 for the applicable family size. Coverage under this subdivision shall be subject to the receipt
67 of notification by the director of the department of social services and the revisor of statutes
68 of 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
74 assistance [under] **pursuant to** this subdivision. Eligibility for medical assistance [under]
75 **pursuant to** this subdivision shall be available only to those infants and children who do not
76 have or have not been eligible for employer-subsidized health care insurance coverage for the
77 six months prior to application for medical assistance. Children are eligible for
78 employer-subsidized coverage through either parent, including the noncustodial parent. The
79 division of family services may establish a resource eligibility standard in assessing eligibility
80 for persons [under] **pursuant to** this subdivision. The division of medical services shall
81 define the amount and scope of benefits which are available to individuals [under] **pursuant**
82 **to** this subdivision in accordance with the requirement of federal law and
83 regulations. Coverage [under] **pursuant to** this subdivision shall be subject to appropriation
84 to provide services approved [under] **pursuant to** the provisions of this subdivision;

85 (16) The division of family services shall not establish a resource eligibility standard
86 in 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
88 which are available to individuals eligible [under] **pursuant to** each of the subdivisions (12),
89 (13), and (14) of this subsection, in accordance with the requirements of federal law and
90 regulations promulgated thereunder except that the scope of benefits shall include case
91 management 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
99 in accordance with applicable federal and state law and regulations so long as the child is a
100 member of the woman's household and either the woman remains eligible for such assistance
101 or for children born on or after January 1, 1991, the woman would remain eligible for such
102 assistance if she were still pregnant. Upon notification of such child's birth, the division of
103 family services shall assign a medical assistance eligibility identification number to the child
104 so that claims may 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
108 division of family services shall utilize an application for eligibility for such persons which
109 eliminates information requirements other than those necessary to apply for medical
110 assistance. The division shall provide such application forms to applicants whose preliminary
111 income information indicates that they are ineligible for aid to families with dependent
112 children. Applicants for medical assistance benefits [under] **pursuant to** subdivision (12),
113 (13) or (14) shall be informed of the aid to families with dependent children program and that
114 they are entitled to apply for such benefits. Any forms utilized by the division of family
115 services for assessing eligibility [under] **pursuant to** this chapter shall be as simple as
116 practicable;

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

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

135 (22) Case management services for pregnant women and young children at risk shall
136 be a covered service. To the greatest extent possible, and in compliance with federal law and
137 regulations, the department of health shall provide case management services to pregnant
138 women by contract or agreement with the department of social services through local health
139 departments organized [under] **pursuant to** the provisions of chapter 192, RSMo, or chapter
140 205, RSMo, or a city health department operated under a city charter or a combined
141 city-county health department or other department of health designees. To the greatest
142 extent possible the department of social services and the department of health shall mutually
143 coordinate all services for pregnant women and children with the crippled children's program,
144 the prevention of mental retardation program and the prenatal care program administered
145 by the department of health. The department of social services shall by regulation establish
146 the methodology for reimbursement for case management services provided by the
147 department of health. For purposes of this section, the term "case management" shall mean
148 those activities of local public health personnel to identify prospective Medicaid-eligible
149 high-risk mothers and enroll them in the state's Medicaid program, refer them to local
150 physicians or local health departments who provide prenatal care under physician protocol
151 and who participate in the Medicaid program for prenatal care and to ensure that said
152 high-risk mothers receive support from all private and public programs for which they are
153 eligible and shall not include involvement in any Medicaid prepaid, case-managed programs;

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

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

162 (25) All persons who would be determined to be eligible for old age assistance benefits,
163 permanent and total disability benefits, or aid to the blind benefits, under the eligibility
164 standards in effect December 31, 1973, [or those supplemental security income recipients who
165 would be determined eligible for general relief benefits under the eligibility standards in effect

166 December 31, 1973, except income; or less restrictive standards as established by rule of the
167 division of family services] **except that less restrictive income methodologies, as**
168 **authorized under 42 U.S.C. 1396a (r)(2), shall be used to raise the income limit to**
169 **eighty-five percent of the federal poverty level on July 1, 2002; ninety percent of the**
170 **federal poverty level on July 1, 2003; and one hundred percent of the federal**
171 **poverty level on July 1, 2004.** If federal law or regulation authorizes the division of family
172 services to, by rule, exclude the income or resources of a parent or parents of a person under
173 the age of eighteen and such exclusion of income or resources can be limited to such parent
174 or parents, then notwithstanding the provisions of section 208.010:

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

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

179 (26) Within thirty days of the effective date of an initial appropriation authorizing
180 medical assistance on behalf of "medically needy" individuals for whom federal
181 reimbursement is available [under] **pursuant to** 42 U.S.C. 1396a (a)(10)(c), the department
182 of social services shall submit an amendment to the Medicaid state plan to provide medical
183 assistance on behalf of, at a minimum, an individual described in subclause (I) or (II) of clause
184 42 U.S.C. 1396a (a)(10)(C)(ii).

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

189 3. After December 31, 1973, and before April 1, 1990, any family eligible for assistance
190 pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the last six months
191 immediately preceding the month in which such family became ineligible for such assistance
192 because of increased income from employment shall, while a member of such family is
193 employed, remain eligible for medical assistance for four calendar months following the month
194 in which such family would otherwise be determined to be ineligible for such assistance
195 because of income and resource limitation. After April 1, 1990, any family receiving aid
196 pursuant to 42 U.S.C. 601 et seq., as amended, in at least three of the six months immediately
197 preceding the month in which such family becomes ineligible for such aid, because of hours
198 of employment or income from employment of the caretaker relative, shall remain eligible for
199 medical assistance for six calendar months following the month of such ineligibility as long
200 as such family includes a child as provided in 42 U.S.C. 1396r-6. Each family which has
201 received such medical assistance during the entire six-month period described in this section

202 and which meets reporting requirements and income tests established by the division and
203 continues to include a child as provided in 42 U.S.C. 1396r-6 shall receive medical assistance
204 without fee for an additional six months. The division of medical services may provide by rule
205 the scope of medical assistance coverage to be granted to such families.

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

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

210.025. 1. To qualify for receipt of state or federal funds for providing child-care
2 services in the home either by direct payment or through reimbursement to a child-care
3 beneficiary, an applicant and any person over the age of eighteen who is living in the
4 applicant's home shall be required to submit to a criminal background check pursuant to
5 section 43.540, RSMo, and a check of the central registry for child abuse established in section
6 210.145. Effective January 1, 2001, the requirements of this subsection or subsection 2 of this
7 section shall be satisfied through registration with the family care safety registry established
8 in sections 210.900 to 210.936. Any costs associated with such checks shall be paid by the
9 applicant.

10 2. Upon receipt of an application for state or federal funds for providing child-care
11 services in the home, the division of family services shall:

12 (1) Determine if a probable cause finding of child abuse or neglect involving the
13 applicant or any person over the age of eighteen who is living in the applicant's home has
14 been recorded pursuant to section 210.221 or 210.145;

15 (2) Determine if the applicant or any person over the age of eighteen who is living in
16 the applicant's home has been refused licensure or has experienced licensure suspension or

17 revocation pursuant to section 210.221 or 210.496; and

18 (3) Request a criminal background check of the applicant and any person over the age
19 of eighteen who is living in the applicant's home pursuant to section 43.540, RSMo.

20 3. Except as otherwise provided in subsection 4 of this section, upon completion of the
21 background checks in subsection 2 of this section, an applicant shall be denied state or federal
22 funds for providing child care if such applicant or any person over the age of eighteen who is
23 living in the applicant's home:

24 (1) Has had a probable cause finding of child abuse or neglect pursuant to section
25 210.145;

26 (2) Has been refused licensure or has experienced licensure suspension or revocation
27 pursuant to section 210.496;

28 (3) Has pled guilty or nolo contendere to or been found guilty of any felony for an
29 offense against the person as defined by chapter 565, RSMo, **any misdemeanor offense**
30 **pursuant to chapter 565, RSMo, when the victim is a child**, or any other offense against
31 the person involving the endangerment of a child as prescribed by law; of any misdemeanor
32 or felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony
33 for an offense against the family as defined in chapter 568, RSMo, with the exception of the
34 sale of fireworks, as defined in section 320.110, RSMo, to a child under the age of eighteen;
35 of any misdemeanor or felony for pornography or related offense as defined by chapter 573,
36 RSMo; or of any similar crime in any federal, state, municipal or other court of similar
37 jurisdiction of which the director has knowledge or any offenses or reports which will
38 disqualify an applicant from receiving state or federal funds; **of any offense involving**
39 **stalking of a person that is considered a felony in the jurisdiction where such**
40 **offense is charged; of any offense of prostitution, robbery or arson whether a**
41 **misdemeanor or felony; or of any offense involving a firearm whether a**
42 **misdemeanor or felony.**

43 4. An applicant shall be given an opportunity by the division to offer any extenuating
44 or mitigating circumstances regarding the findings, refusals or violations against such
45 applicant or any person over the age of eighteen who is living in the applicant's home listed
46 in subsection 2 of this section. Such extenuating and mitigating circumstances may be
47 considered by the division in its determination of whether to permit such applicant to receive
48 state or federal funds for providing child care in the home.

49 5. An applicant who has been denied state or federal funds for providing child care
50 in the home may appeal such denial decision in accordance with the provisions of section
51 208.080, RSMo.

52 6. If an applicant is denied state or federal funds for providing child care in the home

53 based on the background check results for any person over the age of eighteen who is living
54 in the applicant's home, the applicant shall not apply for such funds until such person is no
55 longer living in the applicant's home.

56 7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
57 is created under the authority delegated in this section shall become effective only if it
58 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,
59 section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no
60 force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect
61 the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all
62 applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if
63 any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to
64 review, to delay the effective date or to disapprove and annul a rule are subsequently held
65 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
66 after August 28, 1999, shall be invalid and void.

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

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

4 (1) "Child-care provider", any licensed or license-exempt child-care home, any licensed
5 or license-exempt child-care center, child-placing agency, residential care facility for children,
6 group home, foster family group home, foster family home, employment agency that refers a
7 child-care worker to parents or guardians as defined in section 289.005, RSMo. The term
8 "child-care provider" does not include summer camps or voluntary associations designed
9 primarily for recreational or educational purposes;

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

13 (3) "Department", the department of health;

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

21 (5) "Elder-care worker", any person who is employed by an elder-care provider, or who
22 receives state or federal funds, either by direct payment, reimbursement or voucher payment,

23 as remuneration for elder-care services;

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

25 (7) **"Employer", any child care provider, elder care provider, or personal care**
26 **provider as defined in this section;**

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

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

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

37 [(8)] (11) "Related elder care", care provided only to an elder by an adult child, a
38 spouse, a grandchild, a great-grandchild or a sibling of such elder.

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

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

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

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

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

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

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

19 [(5)] (6) Child-care facility license denials, revocations and suspensions pursuant to
20 sections 210.201 to 210.259; and

21 [(6)] (7) Residential living facility and nursing home license denials, revocations,
22 suspensions and probationary status pursuant to chapter 198, RSMo.

210.906. 1. **With the exception of non-contracted state employees**, every
2 child-care [worker and], elder-care **or personal-care** worker hired on or after January 1,
3 2001, shall complete a registration form provided by the department. The department shall
4 make such forms available no later than January 1, 2001, and may, by rule, determine the
5 specific content of such form, but every form shall:

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

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

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

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

13 2. Any person hired on or after January 1, 2001, shall complete a registration form
14 within fifteen days of the beginning of such person's employment. Any person employed as
15 a child-care [worker or], elder-care **or personal-care** worker who fails to submit a completed
16 registration form to the department of health as required by sections 210.900 to 210.936 **and**
17 **any employer under contract with the state who fails to confirm an employee's**
18 **registration** without good cause, as determined by the department, is guilty of a class B
19 misdemeanor.

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

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

30 5. The provisions of sections 210.900 to 210.936 shall not extend to related child care
31 [and], related elder care **or related personal-care**.

210.909. 1. Upon submission of a completed registration form by a child-care worker
2 [or], elder-care worker **or personal-care attendant**, the department, [in coordination with
3 the department of social services,] 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] **sections 210.109 to 210.183 or,**
6 **as of January 1, 2003, if there is a probable cause finding of financial exploitation**
7 **of the elderly or disabled pursuant to section 570.145, RSMo;**

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

10 (3) Determine if the applicant has been placed on the employee disqualification list
11 pursuant to section 660.315, RSMo;

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

14 (5) Determine through a request to the patrol pursuant to section 43.540, RSMo,
15 whether the applicant has any conviction, plea of guilty or nolo contendere, or a suspended
16 execution of sentence to a [felony] charge of any offense pursuant to chapters 198, 334, 560,
17 565, 566, 568, 569, 573, 575 and 578, RSMo; and

18 [(5)] (6) If the background check involves a provider, determine if a facility has been
19 refused licensure or has experienced licensure suspension, revocation or probationary status
20 pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

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

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

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

210.921. 1. The department shall not provide any registry information pursuant to
2 this section unless the department obtains [by asking for] the name and address of the person

3 calling, and determines that the inquiry is for **licensure or** employment purposes only. For
4 purposes of sections 210.900 to 210.936, "employment purposes" includes direct
5 employer-employee relationships, prospective employer-employee relationships, and screening
6 and interviewing of persons or facilities by those persons contemplating the placement of an
7 individual in a [child- or] **child-care, elder-care or personal-care** setting. Disclosure of
8 background information concerning a given applicant recorded by the department in the
9 registry shall be limited to:

10 (1) Confirming whether the individual is listed in the registry; and

11 (2) Indicating whether the individual has been listed or named in any of the
12 background checks listed in subsection 2 of section 210.903. If such individual has been so
13 listed, the department of health shall only disclose the name of the background check in
14 which the individual has been identified. **With the exception of any agency licensed by**
15 **the state to provide child-care, elder-care or personal care which shall receive**
16 **specific information immediately if requested,** any specific information related to such
17 background check shall only be disclosed after the department has received a signed request
18 from the person calling, with the person's name, address and reason for requesting the
19 information.

20 2. Any person requesting registry information shall be informed that the registry
21 information provided pursuant to this section consists only of information relative to the state
22 of Missouri and does not include information from other states or information that may be
23 available from other states.

24 3. Any person who uses the information obtained from the registry for any purpose
25 other than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B
26 misdemeanor.

27 4. When any registry information is disclosed pursuant to subdivision (2) of subsection
28 1 of this section, the department shall notify the registrant of the name and address of the
29 person making the inquiry.

30 5. The department of health staff providing information pursuant to sections 210.900
31 to 210.936 shall have immunity from any liability, civil or criminal, that otherwise might
32 result by reason of such actions; provided, however, any department of health staff person
33 who releases registry information in bad faith or with ill intent shall not have immunity from
34 any liability, civil or criminal. Any such person shall have the same immunity with respect
35 to participation in any judicial proceeding resulting from the release of registry
36 information. The department is prohibited from selling the registry or any portion of the
37 registry for any purpose including "employment purposes" as defined in subsection 1 of this
38 section.

210.927. The department of health shall make an annual report, no later than July
2 first of each year, to the speaker of the house of representatives and the president pro tem of
3 the senate on the operation of the family care safety registry and toll-free telephone service,
4 including data on the number of information requests received from the public, identification
5 of any barriers encountered in administering the provisions of sections 210.900 to 210.936,
6 recommendations for removing or minimizing the barriers so identified, and any
7 recommendations for improving the delivery of information on child-care [workers and],
8 elder-care **and personal-care** workers to the public.

210.930. By January 1, 2001, the department shall provide a report to the speaker
2 of the house and president pro tem of the senate with recommendations on:

3 (1) Ensuring that thorough background checks are conducted on all providers
4 pursuant to sections 210.900 to 210.936 without duplicating background checks that are
5 required or have been conducted pursuant to other provisions in state law;

6 (2) Ensuring that data obtained from background checks which are currently
7 available or may be required by law after August 28, 1999, are included in the registry;

8 (3) The feasibility of transferring the responsibility of conducting background checks
9 on providers to the registry;

10 (4) [Providing information and access to the registry for personal care attendants for
11 the disabled;

12 (5)] Including a national screening process on a voluntary and mandatory basis within
13 the registry; and

14 [(6)] **(5)** Effecting Internet access to the registry.

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

6 **2. Effective January 1, 2002, elder-care providers subject to the provisions**
7 **of section 187.084, RSMo, shall access the family care safety registry to satisfy the**
8 **employee disqualification 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]
3 **187.020 to 187.028, 187.050 and 187.080, RSMo, section 198.090, RSMo, sections 210.109**
4 **to 210.183 and [sections 660.300 to 660.315] section 630.170, RSMo, shall be deemed public**
5 **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
4 of the reasons for the refusal and shall advise the applicant of his **or her** right to file a
5 complaint 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
9 failed to renew or has surrendered his **or her** certificate of registration or authority, permit
10 or license 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
13 the 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
15 guilty or nolo contendere, pursuant to criminal prosecution **[under] pursuant to** the laws of
16 any state or of the United States, for any offense reasonably related to the qualifications,
17 functions or duties of any profession licensed or regulated **[under] pursuant to** this chapter,
18 for any offense an essential element of which is fraud, dishonesty or an act of violence, or for
19 any offense involving moral turpitude, whether or not sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate
21 of 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
24 by fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or
26 dishonesty in the performance of the functions or duties of any profession licensed or
27 regulated by this 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,
31 permit or license, or allowing any person to use his **or her** certificate of registration or
32 authority, permit, 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
35 country 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
44 or 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
47 that it is abuse or neglect.

48 3. The administrative hearing commission shall have no authority to require issuance
49 of a license, pending a final determination by the commission, in any case in which an
50 applicant is 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,
55 provided in subsection 2 of this section, for disciplinary action are met, the board may, singly
56 or in combination, place upon probation, suspend or revoke a certificate of registration or
57 authority, permit or license.

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

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

7 **(2) Has sexual intercourse or deviant sexual intercourse, as defined in
8 section 566.010, RSMo, with a resident is guilty of a class D felony. Any person who
9 commits a second or subsequent violation of this subdivision is guilty of a class C
10 felony.**

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

**660.026. Subject to appropriation, the director of the department of social
2 services, or the director's designee, may contract with and provide funding support**

3 to federally qualified health centers, as defined in 42 U.S.C. Section 1396d(1)(2)(B),
4 in this state. Funds appropriated pursuant to this section shall be used to assist
5 such centers in ensuring that health care, including dental care, is available to
6 needy persons in this state. Such funds may also be used by centers for capital
7 expansion, infrastructure redesign or other similar uses if federal funding is not
8 available for such purposes.

660.030. 1. No legally recognized privilege, except between attorney and
2 client, shall exempt a person from the reporting requirements of sections 187.020,
3 187.050 and 187.080 to 187.087, RSMo, and sections 660.250 to 660.295, or permit a
4 person to refuse to cooperate fully with or refuse access to records by the
5 department in any of its investigations or activities initiated pursuant to sections
6 187.020, 187.050 and 187.080 to 187.087, RSMo, or sections 660.250 to 660.295, or
7 permit a person to refuse to give or receive evidence in any judicial proceeding
8 relating to the likelihood of harm to an eligible adult, as defined 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
11 protection of an eligible adult, the department and any of its personnel shall have
12 access to all financial, medical and mental health records of any such eligible adult
13 regardless of the institution, facility or entity in possession of such records.

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

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

9 (1) Serve as advocate for the elderly by promoting a comprehensive, coordinated
10 service program through administration of Older Americans Act (OAA) programs (Title III)
11 P.L. 89-73, (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
16 facilities 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
22 social 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
34 persons in Missouri consistent with the provisions of subsection 1 of this section and serve
35 as the 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
38 plans should be revised annually and should be based on area agency on aging plans,
39 statewide priorities, and state and federal requirements;

40 (13) Receive and disburse all federal and state funds allocated to the division and
41 solicit, accept, and administer grants, including federal grants, or gifts made to the division
42 or to the 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
46 to 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
49 on 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
53 elderly persons in this state, including, but not limited to, their needs for social and health

54 services, and to determine what existing services and facilities, private and public, are
55 available to elderly persons to meet those needs;

56 (18) Maintain a clearinghouse for information related to the needs and interests of
57 elderly 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
61 of 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,
65 and 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
71 of social services, shall be the chief administrative officer of the division and shall exercise for
72 the division the powers and duties of an appointing authority [under] **pursuant to** chapter
73 36, RSMo, to employ such administrative, technical and other personnel as may be necessary
74 for the 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
76 can be shown the federal or state laws or rules have not been complied with, state or federal
77 funds are not being expended for the purposes for which they were intended, or the elderly
78 are not receiving appropriate services within available resources, and after consultation with
79 the director of the area agency on aging and the area agency board. Withdrawal of any
80 particular program of services may be appealed to the director of the department of social
81 services and the governor. In the event that the division withdraws the area agency on aging
82 designation in accordance with the Older Americans Act, the division shall administer the
83 services to clients previously performed by the area agency on aging until a new area agency
84 on aging is designated.

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

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

94 6. The division may issue and promulgate rules to enforce, implement and effectuate
95 the powers and duties established in sections [198.070 and] **187.020 to 187.034, 187.050 and**
96 **187.080 to 187.087, RSMo, section** 198.090, RSMo, and sections 660.050, 660.250 [and
97 660.300 to 660.320]. No rule or portion of a rule promulgated [under] **pursuant to** the
98 authority of this chapter and sections [198.070] **187.020 to 187.028** and 198.090, RSMo, shall
99 become effective unless it has been promulgated pursuant to the provisions of [section
100 536.024] **chapter 536**, RSMo.

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

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

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

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

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

11 **2. Any survey that is posted on the web site which is in dispute shall contain**
12 **a notation on the web site indicating that such survey is in dispute.**

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

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

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

11 (3) Include a disclaimer that indicates that the division is providing
12 information on the availability of services throughout the state only and such
13 publication should not be interpreted as a rating or endorsement of any such
14 company, organization or facility; and

15 (4) Include information to consumers on where to obtain inspection and
16 survey information on listed companies, their licensure status and any other
17 information that will provide consumers with information regarding the quality of
18 services offered by providers of senior services; and

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

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

24 (1) The publication shall be produced in a format and manner substantially
25 similar to the 2000 official travel guide published by the division of tourism within
26 the department of economic development with services broken down by region of
27 the state;

28 (2) The publication shall contain advertising sufficient to cover the cost of
29 producing such publication over and above the current senior guide appropriation,
30 but shall not exceed thirty-five percent of the publication; and

31 (3) If the revenue from the sale of advertising is not sufficient to cover the
32 cost of the publication, the production costs, such as quality of paper and the use
33 of photographs, shall be reduced and/or advertising rates shall be increased to
34 result in a net zero cost for the state.

660.083. Pursuant to chapter 198, RSMo, when the department of social
2 services issues a license for or renews the existing license of a facility, as defined
3 in section 198.006, RSMo, the division of aging shall consider the compliance
4 history of a facility and of the facility's operator. Any facility responses to survey
5 findings shall be included and considered in the official review made by the
6 division.

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

5 2. All Medicaid participation agreements entered into between the
6 department of social services and long-term care facilities shall include a
7 requirement that such facilities comply with the provisions of sections 660.600 to

8 **660.608 regarding access to such facilities by ombudsmen or representatives of the**
 9 **office of the state ombudsmen for long-term care facility residents.**

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

4 **2. The division shall authorize additional reimbursement to providers for**
 5 **the 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**
 7 **care program, the division shall amend the rules and regulations regarding adult**
 8 **day care programs with existing long-term care facilities. The changes shall**
 9 **eliminate the duplication of program requirements while continuing to ensure the**
 10 **care level and appropriate direct care staffing for the protection of nursing home**
 11 **residents and adult day care clients.**

660.600. As used in sections 660.600 to 660.608, the following terms mean:

2 (1) ["Division", the division of aging of the department of social services;

3 (2)] "Long-term care facility", any facility licensed pursuant to chapter 198, RSMo,
 4 and long-term care facilities connected with hospitals licensed pursuant to chapter 197,
 5 RSMo;

6 [(3)] **(2)** "Office", the office of the state ombudsman for long-term care facility
 7 residents;

8 [(4)] **(3)** "Ombudsman", the state ombudsman for long-term care facility residents;

9 [(5)] **(4)** "Regional ombudsman coordinators", designated individuals working for, or
 10 under contract with, the area agencies on aging, and who are so designated by the [area
 11 agency on aging] **office of lieutenant governor** and certified by the ombudsman as meeting
 12 the qualifications established by the [division] **office of lieutenant governor**;

13 [(6)] **(5)** "Resident", any person who is receiving care or treatment in a long-term care
 14 facility.

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

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

8 **3. The office shall establish and implement procedures for receiving, processing,**
 9 **responding to, and resolving complaints made by or on behalf of residents of long-term care**

10 facilities relating to action, inaction, or decisions of providers, or their representatives, of
11 long-term care services, of public agencies or of social service agencies, which may adversely
12 affect the health, safety, welfare or rights of such residents.

13 4. The [division] **office of lieutenant governor** shall establish and implement
14 procedures for resolution of complaints. The ombudsman or representatives of the office shall
15 have the authority to:

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

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

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

27 6. **Where written consent or written documentation from a representative**
28 **of the office to support oral consent of the complainant, resident or the legal**
29 **representative of such resident exists, the office or regional ombudsman**
30 **coordinator may make a report of the suspected abuse or neglect of the resident to**
31 **the central registry pursuant to section 660.263.**

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

39 [7.] 8. The office shall promote community contact and involvement with residents
40 of facilities through the use of volunteers and volunteer programs directed by the regional
41 ombudsman coordinators.

42 [8.] 9. The office shall develop and establish [by regulation of the division] statewide
43 policies and standards for implementing the activities of the ombudsman program, including
44 the qualifications and the training of regional ombudsman coordinators and ombudsman
45 volunteers.

46 [9.] **10.** The office shall develop and propose programs for use, training and
47 coordination of volunteers in conjunction with the regional ombudsman coordinators and may:

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

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

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

53 [10.] **11.** The office shall prepare and distribute to each facility written notices which
54 set forth the address and telephone number of the office, a brief explanation of the function
55 of the office, the procedure to follow in filing a complaint and other pertinent information.

56 [11.] **12.** The administrator of each facility shall ensure that such written notice is
57 given to every resident or [his] **every resident's** guardian upon admission to the facility and
58 to every person already in residence, or to his **or her** guardian. The administrator shall also
59 post such written notice in a conspicuous, public place in the facility in the number and
60 manner set forth [in the regulations adopted by the division] **by the office of lieutenant**
61 **governor.**

62 [12.] **13.** The office shall inform residents, their guardians or their families of their
63 rights and entitlements under state and federal laws and rules and regulations by means of
64 the distribution of educational materials and group meetings.

65 **14. All funding and full-time employees designated for the office of the state**
66 **ombudsman for long-term care facility residents shall be transferred from the**
67 **division of aging within the department of social services to the office of the**
68 **lieutenant governor.**

69 **15. The office of lieutenant governor may establish additional ombudsman**
70 **programs relating to elder-care if the office of lieutenant governor obtains the**
71 **necessary funding for such a program. The office of lieutenant governor shall**
72 **actively seek any state or federal funding sources available to implement the**
73 **provisions of this subsection.**

660.604. There is hereby established a five-member "Long-term Care Facility
2 **Ombudsman Advisory Commission". The lieutenant governor shall serve as a**
3 **permanent member of the commission with the remaining four members to be**
4 **appointed by the lieutenant governor to oversee the transfer of the state**
5 **ombudsman from the division of aging to the office of the lieutenant governor. The**
6 **commission shall also assist the state ombudsman with policy issues and the**
7 **development of the state ombudsman program to ensure statewide consistency in**
8 **the implementation of the program. Ombudsman commissioners shall be appointed**

9 for four-year terms, except the first commission shall be appointed as follows: two
10 members to a four-year term, one member to a three-year term and one member to
11 a two-year term. Each commissioner shall hold office until his or her successor has
12 been appointed and qualified.

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

Section 2. By January 1, 2002, the departments of social services, health and
2 mental health shall prepare and submit a joint report to the general assembly
3 regarding the consolidation and centralization of those department's employee
4 disqualification lists into one employee disqualification list. The recommendations
5 contained in the report shall include, but not be limited to, the feasibility,
6 administration, implementation, fiscal impact and legal implications of such
7 consolidation and centralization of the employee disqualification lists. The report
8 shall also contain an analysis of the utilization of existing mechanisms, such as the
9 family care safety registry, to accomplish the consolidation and centralization of
10 the employee disqualification lists.

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

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

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

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

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

43 7. Reports shall be confidential, as provided pursuant to section
44 660.320, RSMo.

45 8. Anyone who makes a report pursuant to this section or who testifies
46 in any administrative or judicial proceeding arising from the report shall be
47 immune from any civil or criminal liability for making such a report or for
48 testifying except for liability for perjury, unless such person acted in bad faith
49 or with malicious purpose. It is a crime pursuant to section 565.186 and
50 565.188, RSMo, for any person to purposely file a false report of elder abuse
51 or neglect.

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

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

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

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

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

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

 [565.188. 1. When any physician, medical examiner, coroner, dentist,
2 chiropractor, optometrist, podiatrist, resident intern, nurse, hospital and clinic
3 personnel engaged in examination, care or treatment of persons, or other
4 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

8 abused or neglected, as a result of in-home services, he shall immediately
9 report or cause a report to be made to the department.

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

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

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

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

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

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

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

43 9. Within five working days after a report required to be made under

44 this section is received, the person making the report shall be notified in
45 writing of its receipt and of the initiation of the investigation.

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

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

55 12. The department shall maintain the employee disqualification list
56 and place on the employee disqualification list the names of any persons who
57 have been finally determined by the department, pursuant to section 660.315,
58 to have recklessly, knowingly or purposely abused or neglected an in-home
59 services client while 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
4 falsification of any documents verifying service delivery to the in-home services
5 client has occurred, may report such information to the department.

6 2. For each report the division shall attempt to obtain the names and
7 addresses of the in-home services provider agency, the in-home services
8 employee, the in-home services client, information regarding the nature of the
9 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
12 who puts to his own use or the use of the in-home services provider agency or
13 otherwise diverts from the in-home services client's use any personal property
14 or funds of the in-home services client, or falsifies any documents for service
15 delivery, shall be guilty of a class A misdemeanor.

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

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

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

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

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

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

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

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

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

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

9 (3) The consequences of being so listed including the length of time to
10 be 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
13 notice, the department may include the name of such person on its list. The

length of time the person's name shall appear on the employee disqualification list shall be determined by the director or his designee, based upon the criteria contained in subsection 9 of this section.

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

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

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

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

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

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment

50 disqualification proceeding, unless the civil action is brought against the
51 facility or the in-home services provider agency by the department of social
52 services or one of its divisions.

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

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

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

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

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

65 (5) Any mitigating circumstances; and

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

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

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

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

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

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

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

85 (5) Is an entity licensed under chapter 197, RSMo. The department

86 shall inform any person listed above who inquires of the division of aging
87 whether or not a particular name is on the list. The division may require that
88 the request be made in writing.

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

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

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

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

11 2. For the purpose of this section "patient or resident" has the same

12 meaning as such term is defined in section 43.540, RSMo.

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

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

26 (2) Make an inquiry to the department of social services, whether the
27 person is listed on the employee disqualification list as provided in section
28 660.315.

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

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

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

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

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

43 6. An applicant who knowingly fails to disclose his criminal history as
44 required in subsection 5 of this section is guilty of a class A misdemeanor. A
45 provider is guilty of a class A misdemeanor if the provider knowingly hires a
46 person to have contact with patients or residents and the person has been
47 convicted of, pled guilty to or nolo contendere in this state or any other state

or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo.

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

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

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

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

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

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

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

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

(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

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

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