

SECOND REGULAR SESSION

# HOUSE BILL NO. 1767

## 93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRUNS.

Read 1st time February 14, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4977L.011

### AN ACT

To repeal sections 197.500, 198.006, 198.070, 208.909, 210.906, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.70, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, and to enact in lieu thereof forty-nine new sections relating to protections for disabled persons and the elderly, with penalty provisions.

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

Section A. Sections 197.500, 198.006, 198.070, 208.909, 210.906, 660.050, 660.053, 2 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.70, 660.099, 3 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 4 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 5 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 6 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, are repealed and forty-nine 7 new sections enacted in lieu thereof, to be known as sections 192.2000, 192.2001, 192.2003, 8 192.2006, 192.2009, 192.2012, 192.2015, 192.2025, 192.2030, 192.2033, 192.2035, 192.2040, 9 192.2100, 192.2103, 192.2106, 192.2109, 192.2112, 192.2115, 192.2118, 192.2121, 192.2124, 10 192.2127, 192.2130, 192.2150, 192.2153, 192.2175, 192.2178, 192.2181, 192.2184, 192.2187, 11 192.2200, 192.2203, 192.2206, 192.2209, 192.2212, 192.2215, 192.2218, 192.2221, 192.2224,

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

12 192.2227, 192.2250, 192.2253, 198.006, 198.700, 198.703, 198.705, 198.708, 208.909, and  
13 210.906, to read as follows:

[660.050.] **192.2000.** 1. The "Division of Aging" is hereby transferred from the  
2 department of social services to the department of health and senior services by a type I transfer  
3 as defined in the Omnibus State Reorganization Act of 1974. **All references in the revised**  
4 **statutes of Missouri to the division of aging shall include any division or divisions**  
5 **established by the department as a successor division or divisions to the division of aging.**  
6 The division shall aid and assist the elderly and low-income handicapped adults living in the  
7 state of Missouri to secure and maintain maximum economic and personal independence and  
8 dignity. The division shall regulate adult long-term care facilities pursuant to the laws of this  
9 state and rules and regulations of federal and state agencies, to safeguard the lives and rights of  
10 residents in these facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78 3. The division director, subject to the supervision of the director of the department of  
79 health and senior services, shall be the chief administrative officer of the division and shall  
80 exercise for the division the powers and duties of an appointing authority pursuant to chapter 36,  
81 RSMo, to employ such administrative, technical and other personnel as may be necessary for the  
82 performance of the duties and responsibilities of the division.

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

92 5. Any person hired by the department of health and senior services after August 13,  
93 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198,  
94 RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection  
95 process and applicable rules and statutes during the first six months of employment. Any such  
96 person shall annually, on the anniversary date of employment, present to the department evidence  
97 of having completed at least twenty hours of continuing education in at least two of the following  
98 categories: communication techniques, skills development, resident care, or policy update. The  
99 department of health and senior services shall by rule describe the curriculum and structure of  
100 such continuing education.

101 6. The division may issue and promulgate rules to enforce, implement and effectuate the  
102 powers and duties established in this section [and sections 198.070 and 198.090, RSMo, and  
103 sections 660.250 and 660.300 to 660.320], **section 192.2100 and sections 192.2175 to**  
104 **192.2187, and section 198.090, RSMo.** Any rule or portion of a rule, as that term is defined in  
105 section 536.010, RSMo, that is created under the authority delegated in this section shall become

106 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,  
107 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
108 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
109 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently  
110 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
111 after August 28, 2001, shall be invalid and void.

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

115 8. The division shall, by January 1, 2002, establish minimum dementia-specific training  
116 requirements for employees involved in the delivery of care to persons with Alzheimer's disease  
117 or related dementias who are employed by skilled nursing facilities, intermediate care facilities,  
118 residential care facilities, agencies providing in-home care services authorized by the [division  
119 of aging] **department**, adult day-care programs, independent contractors providing direct care  
120 to persons with Alzheimer's disease or related dementias and the [division of aging] **department**.  
121 Such training shall be incorporated into new employee orientation and ongoing in-service  
122 curricula for all employees involved in the care of persons with dementia. The department of  
123 health and senior services shall, by January 1, 2002, establish minimum dementia-specific  
124 training requirements for employees involved in the delivery of care to persons with Alzheimer's  
125 disease or related dementias who are employed by home health and hospice agencies licensed  
126 by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice  
127 agency's new employee orientation and ongoing in-service curricula for all employees involved  
128 in the care of persons with dementia. The dementia training need not require additional hours  
129 of orientation or ongoing in-service. Training shall include at a minimum, the following:

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

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

137

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

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

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

- 4 (1) "Area agency on aging", the agency designated by the division in a planning and  
5 service area to develop and administer a plan and administer available funds for a comprehensive  
6 and coordinated system of services for the elderly and persons with disabilities who require  
7 similar services;
- 8 (2) "Area agency board", the local policy-making board which directs the actions of the  
9 area agency on aging under state and federal laws and regulations;
- 10 (3) "Director", the director of the division of aging of the Missouri department of [social]  
11 **health and senior** services;
- 12 (4) "Division", the division of aging of the Missouri department of [social] **health and**  
13 **senior** services;
- 14 (5) "Elderly" or "elderly persons", persons who are sixty years of age or older;
- 15 (6) "Disability", a mental or physical impairment that substantially limits one or more  
16 major life activities, whether the impairment is congenital or acquired by accident, injury or  
17 disease, where such impairment is verified by medical findings;
- 18 (7) "Local government", a political subdivision of the state whose authority is general  
19 or a combination of units of general purpose local governments;
- 20 (8) "Major life activities", functions such as caring for one's self, performing manual  
21 tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
- 22 (9) "Medicaid", medical assistance provided under section 208.151, RSMo, et seq., in  
23 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42  
24 U.S.C. 301 et seq.), as amended;
- 25 (10) "Protective services", a service provided by the [Missouri division of aging]  
26 **department** in response to the need for protection from harm or neglect to eligible adults under  
27 sections [660.250 to 660.295] **192.2100 to 192.2130**;
- 28 (11) "Registered caregiver", a person who provides primary long-term care for an elderly  
29 person and wishes to receive information, services or support from the shared care program;
- 30 (12) "Shared care", a program administered by the [division of aging] **department** in  
31 which Missouri families who provide primary long-term care for an elderly person and register  
32 as a shared care member with the [division of aging] **department** shall receive access to certain  
33 supportive services and may receive a state tax credit;

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

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

38 (15) "Shared care provider", any state authorized long-term care provider in the state,  
39 including, but not limited to, in-home, home health, hospice, adult day care, residential care  
40 facility I or II, or nursing home, who voluntarily registers with the [division of aging]  
41 **department** to be available as a resource for the shared care program;

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

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

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

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

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

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

11 (5) To provide a tax credit to members who meet the qualifications pursuant to section  
12 [660.055] **192.2009**; and

13 (6) To promote community involvement by:

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

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

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

24 (1) Promulgate specific rules and procedures for the shared care program. Any rule or  
25 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the  
26 authority delegated in sections [660.050 to 660.057] **192.2000 to 192.2012** shall become

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

36 (2) Maintain a registry of names and addresses of shared care members and shared care  
37 providers;

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

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

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

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

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

59 (b) Identifying information about the elderly person receiving care for verification  
60 purposes;

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



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

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

70 (7) In conjunction with the director of revenue, develop a division of aging certification  
71 for shared care tax credit form to be given at the request of the registered caregivers when a  
72 division of aging assessment has been completed for other purposes. The form shall require, but  
73 is not limited to:

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

77 (b) Identifying information about the elderly person receiving care for verification  
78 purposes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
28 is created under the authority delegated in sections [660.050 to 660.057] **192.2000 to 192.2012**  
29 shall become effective only if it complies with and is subject to all of the provisions of chapter  
30 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior  
31 to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be  
32 interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,  
33 if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo,  
34 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter  
35 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are  
36 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed  
37 or adopted after August 28, 1999, shall be invalid and void.

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

[660.057.] **192.2012.** 1. On and after August 13, 1984, an area agency on aging shall  
2 operate with local administrative responsibility for Title III of the Older Americans Act, and  
3 other funds allocated to it by the [division] **department**. The area agency board shall be  
4 responsible for all actions of an area agency on aging in its jurisdiction, including, but not limited  
5 to, the accountability for funds and compliance with federal and state laws and rules. Such

6 responsibility shall include all geographic areas in which the area agency on aging is designated  
7 to operate. The respective area agency board shall appoint a director of the area agency on aging  
8 in its jurisdiction. [Beginning January 1, 1995,] The director of the area agency on aging shall  
9 submit an annual performance report to the [division] **department** director, the speaker of the  
10 house of representatives, the president pro tempore of the senate and the governor. Such  
11 performance report shall give a detailed accounting of all funds which were available to and  
12 expended by the area agency on aging from state, federal and private sources.

13 2. Each area agency on aging shall have an area agency on aging advisory council, which  
14 shall:

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

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

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

23 (4) Meet at least quarterly, with all meetings being subject to sections 610.010 to  
24 610.030, RSMo.

25 3. Each area agency board shall:

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

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

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

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

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

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

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

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

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

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

56 4. [Beginning January 1, 1995,] The records of each area agency on aging shall be  
57 audited at least every other year. All audits required by the Older Americans Act of 1965, as  
58 amended, shall satisfy this requirement.

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

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

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

[660.062.] **192.2025.** 1. There is hereby created a "State Board of Senior Services"  
2 which shall consist of seven members, who shall be appointed by the governor, by and with the

3 advice and consent of the senate. No member of the state board of senior services shall hold any  
4 other office or employment under the state of Missouri other than in a consulting status relevant  
5 to the member's professional status, licensure or designation. Not more than four of the members  
6 of the state board of senior services shall be from the same political party.

7         2. Each member shall be appointed for a term of four years; except that of the members  
8 first appointed, two shall be appointed for a term of one year, two for a term of two years, two  
9 for a term of three years and one for a term of four years. The successors of each shall be  
10 appointed for full terms of four years. No person may serve on the state board of senior services  
11 for more than two terms. The terms of all members shall continue until their successors have  
12 been duly appointed and qualified. One of the persons appointed to the state board of senior  
13 services shall be a person currently working in the field of gerontology. One of the persons  
14 appointed to the state board of senior services shall be a physician with expertise in geriatrics.  
15 One of the persons appointed to the state board of senior services shall be a person with expertise  
16 in nutrition. One of the persons appointed to the state board of senior services shall be a person  
17 with expertise in rehabilitation services of persons with disabilities. One of the persons  
18 appointed to the state board of senior services shall be a person with expertise in mental health  
19 issues. In making the two remaining appointments, the governor shall give consideration to  
20 individuals having a special interest in gerontology or disability-related issues, including senior  
21 citizens. Four of the seven members appointed to the state board of senior services shall be  
22 members of the governor's advisory council on aging. If a vacancy occurs in the appointed  
23 membership, the governor may appoint a member for the remaining portion of the unexpired  
24 term created by the vacancy. The members shall receive actual and necessary expenses plus  
25 twenty-five dollars per day for each day of actual attendance.

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

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

32             (1) Promulgation of rules and regulations by the department of health and senior  
33 services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (5) To develop program models that can be adapted and operated by other public and  
15 private entities.

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

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

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

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

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

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

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

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

5           (2) "Court", the circuit court;

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

7           (4) "Director", director of the department of health and senior services or his or her  
8 designees;

9           (5) "Eligible adult", a person sixty years of age or older who is unable to protect his or  
10 her own interests or adequately perform or obtain services which are necessary to meet his or her  
11 essential human needs or an adult with a disability, as defined in section [660.053] **192.2003,**

12 between the ages of eighteen and fifty-nine who is unable to protect his or her own interests or  
13 adequately perform or obtain services which are necessary to meet his or her essential human  
14 needs;

15 (6) "Home health agency", the same meaning as such term is defined in section 197.400,  
16 RSMo;

17 (7) "Home health agency employee", a person employed by a home health agency;

18 (8) "Home health patient", an eligible adult who is receiving services through any home  
19 health agency;

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

22 (10) "In-home services employee", a person employed by an in-home services provider  
23 agency;

24 (11) "In-home services provider agency", a business entity under contract with the  
25 department or with a Medicaid participation agreement, which employs persons to deliver any  
26 kind of services provided for eligible adults in their private homes;

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

30 (13) "Likelihood of serious physical harm", one or more of the following:

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

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

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

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

45 (14) "Neglect", the failure to provide services to an eligible adult by any person, firm or  
46 corporation with a legal or contractual duty to do so, when such failure presents either an



47 imminent danger to the health, safety, or welfare of the client or a substantial probability that  
48 death or serious physical harm would result;

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

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

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

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

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

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

8 (4) Other relevant information.

9 3. Reports regarding persons determined not to be eligible adults as defined in section  
10 660.250 shall be referred to the appropriate state or local authorities.

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

13 [660.260.] **192.2106.** 1. Upon receipt of a report, the department shall make a prompt  
14 and thorough investigation to determine whether or not an eligible adult is facing a likelihood  
15 of serious physical harm and is in need of protective services. The department shall provide for  
16 any of the following:

17 (1) Identification of the eligible adult and determination that the eligible adult is eligible  
18 for services;

19 (2) Evaluation and diagnosis of the needs of eligible adults;

20 (3) Provision of social casework, counseling or referral to the appropriate local or state  
21 authority;

22 (4) Assistance in locating and receiving alternative living arrangements as necessary;

23 (5) Assistance in locating and receiving necessary protective services; or

24 (6) The coordination and cooperation with other state agencies and public and private  
25 agencies in exchange of information and the avoidance of duplication of services.

26 [660.261.] **2.** Upon receipt of a report that an eligible adult between the ages of eighteen  
27 and fifty-nine is facing a likelihood of serious physical harm, the department shall:

28 (1) Investigate or refer the report to appropriate law enforcement or state agencies; and

29 (2) Provide services or refer to local community or state agencies.

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

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

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

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

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

in order to prevent further harm to an eligible adult.

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

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

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

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

[660.270.] **192.2115.** When the department receives a report that there has been abuse or neglect, or that there otherwise is a likelihood of serious physical harm to an eligible adult and that he or she is in need of protective services and the department is unable to conduct an investigation because access to the eligible adult is barred by any person, the director may petition the appropriate court for a warrant or other order to enter upon the described premises and investigate the report or to produce the information. The application for the warrant or order

7 shall identify the eligible adult and the facts and circumstances which require the issuance of the  
8 warrant or order. The director may also seek an order to enjoin the person from barring access  
9 to an eligible adult or from interfering with the investigation. If the court finds that, based on  
10 the report and relevant circumstances and facts, probable cause exists showing that the eligible  
11 adult faces abuse or neglect, or otherwise faces a likelihood of serious physical harm and is in  
12 need of protective services and the director has been prevented by another person from  
13 investigating the report, the court may issue the warrant or enjoin the interference with the  
14 investigation or both.

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

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

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

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

[660.290.] **192.2127.** 1. When a peace officer has probable cause to believe that an  
2 eligible adult will suffer an imminent likelihood of serious physical harm if not immediately

3 placed in a medical facility for care and treatment, that the adult is incapable of giving consent,  
4 and that it is not possible to follow the procedures in section [660.285] **192.2124**, the officer may  
5 transport, or arrange transportation for, the eligible adult to an appropriate medical facility which  
6 may admit the eligible adult and shall notify the next of kin, if known, and the director.

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

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

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

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

30         6. Nothing contained in this section or in any other section of sections [660.250 to  
31 660.295] **192.2100 to 192.2130** shall be construed as requiring physician or medical care or  
32 hospitalization of any person who, because of religious faith or conviction, relies on spiritual  
33 means or prayer to cure or prevent disease or suffering nor shall any provision of sections  
34 [660.250 to 660.295] **192.2100 to 192.2130** be construed so as to designate any person as an  
35 eligible adult who presents a likelihood of suffering serious physical harm and is in need of  
36 protective services solely because such person, because of religious faith or conviction, relies on  
37 spiritual means or prayer to cure or prevent disease or suffering.

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

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

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

(2) **"Patient", any patient or resident of any entity licensed or certified under chapter 197 or 198, RSMo, or a client of an in-home services provider or adult day care provider;**

(3) **"Provider", any entity licensed or certified under chapter 197 or 198, RSMo, an in-home services provider agency, adult day care provider, or personal care assistance services vendor as defined in section 208.900, RSMo.**

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

[2.] **3. In addition to those persons required to report under subsection 2 of this section, any other person having reasonable cause to believe that a patient or consumer has been abused or neglected, that misrepresentation of property or moneys belonging to a patient or consumer occurred, or that the falsification of any documents verifying service**

32 **delivery to an in-home services client, home health patient, or consumer has occurred may**  
33 **report such information to the department.**

34 **4. If a report is made by the patient's physician, the department shall provide**  
35 **information regarding the progress of the investigation to the physician upon request.**

36 **5. The report shall contain:**

37 **(1) The name and address of the [facility, the name of the resident,] provider and the**  
38 **patient or consumer;**

39 **(2) Information regarding the nature of the abuse or neglect, misappropriation, or**  
40 **falsification of documents verifying service delivery;**

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

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

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

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

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

52 6. Upon receipt of a report **that indicates an imminent danger to the health, safety,**  
53 **or welfare of a patient or consumer or substantial probability that death or serious**  
54 **physical injury will result**, the department shall initiate an investigation within twenty-four  
55 hours and, as soon as possible during the course of the investigation, shall notify the [resident's]  
56 **patient's or consumer's legal representative**, next of kin or responsible party of the report  
57 [and], the investigation, and [further notify them] whether the report was substantiated or  
58 unsubstantiated unless such person is the alleged perpetrator [of the abuse or neglect]. As  
59 provided in section 565.186, RSMo, substantiated reports of elder abuse shall be promptly  
60 reported by the department to the appropriate law enforcement agency and prosecutor.

61 7. If the investigation indicates possible abuse or neglect [of a resident],  
62 **misappropriation of property or moneys, or falsification of documents verifying service**  
63 **delivery**, the investigator shall refer the complaint together with the investigator's report to the  
64 department director or the director's designee for appropriate action.

65 **8. If, during the investigation or at its completion, the department has reasonable cause**  
66 **to believe that immediate [removal] action is necessary to protect the [resident] patient or**  
67 **consumer from abuse or neglect or misappropriation of property or moneys, the department**

68 or the local prosecuting attorney may, or the attorney general upon request of the department  
69 shall, file a petition for temporary care and protection of the [resident] **patient or consumer** in  
70 a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall  
71 have equitable jurisdiction to issue an ex parte order granting the department authority for the  
72 temporary care and protection of the [resident] **patient or consumer**, for a period not to exceed  
73 thirty days.

74 [8.] **9.** Reports shall be confidential, [as provided pursuant to section 660.320 , RSMo]  
75 **shall not be deemed a public record, and shall not be subject to the provisions of section**  
76 **109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person**  
77 **mentioned in the reports shall not be disclosed unless:**

78 (1) **The complainant, patient, or consumer mentioned, or the patient's or**  
79 **consumer's legal representative agrees to disclosure of his or her name;**

80 (2) **The department determines that disclosure is necessary to prevent further abuse**  
81 **or neglect, misappropriation of property or moneys, or falsification of any documents**  
82 **verifying service delivery to an in-home services client, home health patient, or consumer**  
83 **of personal care assistance services;**

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

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

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

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

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

94 [9.] **11.** Anyone, except any person who has abused or neglected a [resident in a facility]  
95 **patient or consumer or who has benefitted from the misappropriation of property or**  
96 **moneys of a patient or consumer, or who has falsified documents verifying service delivery**  
97 **to an in-home services patient, home health patient, or consumer, who makes a report**  
98 **pursuant to this section or who testifies in any administrative or judicial proceeding arising from**  
99 **the report shall be immune from any civil or criminal liability for making such a report or for**  
100 **testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad**  
101 **faith or with malicious purpose. It is a crime pursuant to section 565.186 and 565.188, RSMo,**  
102 **for any person to purposely file a false report of elder abuse or neglect.**

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

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

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

117 13.] **12.** The department shall maintain the employee disqualification list and place on  
118 the employee disqualification list the names of any persons who are or have been employed [in  
119 any facility] **by any provider, vendor, or consumer** and who have been finally determined by  
120 the department pursuant to section [660.315] **192.2175**, RSMo[.]:

121 (1) To have **purposely**, knowingly or recklessly abused or neglected a [resident] **patient**  
122 **or consumer**. For purposes of this section only, "**purposely**", "knowingly" and "recklessly"  
123 shall have the meanings [that are ascribed to them in this section. A person acts "knowingly"  
124 with respect to the person's conduct when a reasonable person should be aware of the result  
125 caused by his or her conduct. A person acts "recklessly" when the person consciously disregards  
126 a substantial and unjustifiable risk that the person's conduct will result in serious physical injury  
127 and such disregard constitutes a gross deviation from the standard of care that a reasonable  
128 person would exercise in the situation] **as such terms are defined in chapter 562, RSMo;**

129 (2) **To have misappropriated property or moneys belonging to a patient or**  
130 **consumer, or to have falsified documents verifying service delivery to an in-home services**  
131 **client, home health patient, or consumer.**

132 **13. No person who directs or exercises any authority on behalf of a provider or**  
133 **vendor, and no personal care attendant, as defined in section 208.900, RSMo, shall evict,**  
134 **harass, dismiss, or retaliate against a patient, consumer, or employee because such patient,**  
135 **consumer, or employee or any member of such patient's, consumer's, or employee's family**  
136 **has made a report of any violation or suspected violation of laws, standards, or regulations**  
137 **applying to the provider or attendant which the complainant has reasonable cause to**  
138 **believe has been committed or has occurred. Through existing department information**



139 **and referral telephone contact line, patients, consumers, their families, and employees of**  
140 **a provider shall be able to obtain information regarding their rights, protections, and**  
141 **options in cases of eviction, harassment, dismissal, or retaliation due to a report being**  
142 **made under this section.**

143 [14.] **15.** The timely self-reporting of incidents to the central registry by a facility  
144 **licensed under chapter 198, RSMo,** shall continue to be investigated in accordance with  
145 department policy, and shall not be counted or reported by the department as a hot-line call but  
146 rather a self-reported incident. If the self-reported incident results in a regulatory violation, such  
147 incident shall be reported as a substantiated report.

**192.2153. 1. Any person required to report or cause a report to be made to the**  
2 **department under subsection 1 of section 192.2150 who fails to make such a report or cause**  
3 **such a report to be made within twenty-four hours after the act or the discovery of the act**  
4 **by such person of abuse or neglect, or misappropriation of property or moneys is guilty of**  
5 **a class A misdemeanor.**

6 **2. In addition to any other penalties imposed by this section, any provider or**  
7 **employer of a provider who knowingly conceals any act of abuse or neglect that results in**  
8 **death or serious physical injury, as defined in section 565.002, RSMo, is guilty of a class**  
9 **D felony.**

10 **3. If an employee of any provider is found guilty or pleads guilty to a violation of**  
11 **section 565.180, 565.182, or 565.184, RSMo, and the provider willfully and knowingly fails**  
12 **to report known abuse by such employee to the department, the provider may be subject**  
13 **to an administrative penalty of one thousand dollars per violation to be collected by the**  
14 **department. Any moneys collected shall be deposited in the state treasury to the credit of**  
15 **the general revenue fund. Any provider that has an administrative penalty imposed by the**  
16 **department or has its contract terminated may seek an administrative review of the**  
17 **department's action under chapter 621, RSMo. Any decision of the administrative hearing**  
18 **commission may be appealed to the circuit court in the county where the violation occurred**  
19 **for a trial de novo.**

[660.315.] **192.2175. 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 notified in  
3 writing mailed to his or her last known address that:

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

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

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

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

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

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

23 4. If a person's name is included on the employee disqualification list without notice **in**  
24 **accordance with subsections 1 and 2 of this section** by the department, such person may file  
25 a request with the 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 or grant a  
27 hearing and set a date therefor.

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

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

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

45           8. A decision by the director shall be inadmissible in any civil action brought against a  
46 [facility or the in-home services provider agency] **provider, vendor, or personal care**  
47 **attendant** and arising out of the facts and circumstances which brought about the employment  
48 disqualification proceeding, unless the civil action is brought against the [facility or the in-home  
49 services provider agency] **provider, vendor, or personal care attendant** by the department of  
50 health and senior services or one of its divisions.

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

54           (1) Whether the person acted **purposely**, recklessly or knowingly, as defined in chapter  
55 562, RSMo;

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

59           (3) The degree of misappropriation of the property or funds, or falsification of any  
60 documents for service delivery of an in-home services client, **home health patient, or**  
61 **consumer**;

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

63           (5) Any mitigating circumstances;

64           (6) Any aggravating circumstances; and

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

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

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

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

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

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

- 81 (4) Is approved by the department to issue certificates for nursing assistants training; [or]  
82 (5) Is an entity licensed under chapter 197, RSMo;  
83 (6) **Is a personal care assistance services vendor agency, as defined in section**  
84 **208.900, RSMo; or**  
85 (7) **Is an adult day care provider licensed under sections 192.2200 to 192.2227.**  
86

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

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

93 13. No person, corporation or association who received the employee disqualification  
94 list under subsection 11 of this section shall knowingly employ any person who is on the  
95 employee disqualification list. **No person who is listed on the employee disqualification list**  
96 **shall be paid from public moneys as a personal care assistance services attendant.** Any  
97 person, corporation or association who received the employee disqualification list under  
98 subsection 11 of this section, or any **consumer or** person responsible for providing health care  
99 service, who declines to employ or terminates a person whose name is listed in this section shall  
100 be immune from suit by that person or anyone else acting for or in behalf of that person for the  
101 failure to employ or for the termination of the person whose name is listed on the employee  
102 disqualification list.

103 [13.] 14. Any employer who is required to discharge an employee because the employee  
104 was placed on a disqualification list maintained by the department of health and senior services  
105 after the date of hire shall not be charged for unemployment insurance benefits based on wages  
106 paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.  
107 **Any person who is employed in a position for which employment is prohibited while such**  
108 **person is listed on the employee disqualification list shall have his or her placement on the**  
109 **employee disqualification list extended one year.**

110 [14.] 15. Any person who has been listed on the employee disqualification list may  
111 request that the director remove his or her name from the employee disqualification list. The  
112 request shall 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, that the person  
114 will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or  
115 the falsification of any documents [of] **verifying** service delivery to an in-home services client,  
116 **home health patient, or consumer.** The director may make conditional the removal of a

117 person's name from the list on any terms that the director deems appropriate, and failure to  
118 comply with such terms may result in the person's name being relisted. The director's  
119 determination of whether to remove the person's name from the list is not subject to appeal.

[660.317.] **192.2178.** 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] **health care staff** for temporary or intermittent  
6 placement in health care facilities;

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

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

10 (6) Is a licensed adult day care provider;

11 (7) **Is a personal care assistance services vendor agency, as defined in section**  
12 **208.900, RSMo.**

13 2. For the purpose of this section "patient or resident" has the same meaning as such term  
14 is defined in section 43.540, RSMo; **and "consumer" has the same meaning as such term is**  
15 **defined in section 208.900, RSMo.**

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

20 (1) Request a criminal background check as provided in section 43.540, RSMo.  
21 Completion of an inquiry to the highway patrol for criminal records that are available for  
22 disclosure to a provider for the purpose of conducting an employee criminal records background  
23 check shall be deemed to fulfill the provider's duty to conduct employee criminal background  
24 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection  
25 shall not be construed to exempt a provider from further inquiry pursuant to common law  
26 requirements governing due diligence. If an applicant has not resided in this state for five  
27 consecutive years prior to the date of his or her application for employment, the provider shall  
28 request a nationwide check for the purpose of determining if the applicant has a prior criminal  
29 history in other states. The fingerprint cards and any required fees shall be sent to the highway  
30 patrol's criminal records division. The first set of fingerprints shall be used for searching the  
31 state repository of criminal history information. If no identification is made, the second set of  
32 fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division,  
33 for the searching of the federal criminal history files. The patrol shall notify the submitting state

34 agency of any criminal history information or lack of criminal history information discovered  
35 on the individual. The provisions relating to applicants for employment who have not resided  
36 in this state for five consecutive years shall apply only to persons who have no employment  
37 history with a licensed Missouri facility during that five-year period. Notwithstanding the  
38 provisions of section 610.120, RSMo, all records related to any criminal history information  
39 discovered shall be accessible and available to the provider making the record request; and

40 (2) Make an inquiry to the department of health and senior services whether the person  
41 is listed on the employee disqualification list as provided in section [660.315] **192.2175**.

42 4. When the provider requests a criminal background check pursuant to section 43.540,  
43 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost  
44 of such record check. When a provider requests a nationwide criminal background check  
45 pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any  
46 background check required pursuant to this section shall not exceed five dollars which shall be  
47 paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal  
48 background check shall be subject to the availability of appropriations.

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

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

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

57 (3) Disclose if the applicant is listed on the employee disqualification list as provided  
58 in section [660.315] **192.2175**.

59 6. An applicant who knowingly fails to disclose his or her criminal history as required  
60 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class  
61 A misdemeanor if the provider knowingly hires or retains a person to have contact with patients  
62 or residents and the person has been convicted of, pled guilty to or nolo contendere in this state  
63 or any other state or has been found guilty of a crime, which if committed in Missouri would be  
64 a class A or B felony violation of chapter **195**, 565, 566 or 569, RSMo, **a class D felony**  
65 **violation of section 570.090, RSMo, or any felony violation or multiple misdemeanor**  
66 **violation of section 570.030, RSMo,** or any violation of subsection [3] **1** of section [198.070,  
67 RSMo,] **192.2153** or section 568.020, RSMo.

68 7. Any in-home services provider agency or home health agency [shall be] **or hospice**  
69 **is** guilty of a class A misdemeanor if such agency **or hospice** knowingly employs a person to

70 provide in-home services, **hospice services**, or home health services to any in-home services  
71 client, **hospice patient**, or home health patient and such person either refuses to register with the  
72 family care safety registry or [is listed] **has a finding report** on any of the background check  
73 lists in the family care safety registry pursuant to sections 210.900 to 210.937, RSMo.

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

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

80 10. Except for the hiring restriction based on the department of health and senior services  
81 employee disqualification list established pursuant to section [660.315] **192.2175**, the department  
82 of health and senior services shall promulgate rules and regulations to waive the hiring  
83 restrictions pursuant to this section for good cause. For purposes of this section, "good cause"  
84 means the department has made a determination by examining the employee's prior work history  
85 and other relevant factors that [such employee does not present a risk to the health or safety of  
86 residents] **the hiring restriction contained in subsections 6 and 7 of this section is removed**  
87 **and the hiring decision becomes the responsibility of the provider.**

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

15 2.] When a report of deteriorating physical condition resulting in possible abuse or  
16 neglect of an in-home services client is received by the department, the client's case manager and  
17 the department nurse shall be notified. The client's case manager shall investigate and  
18 immediately report the results of the investigation to the department nurse. The department may

19 authorize the in-home services provider nurse to assist the case manager with the investigation.

20 [3.]2. If requested, local area agencies on aging shall provide volunteer training to those  
21 persons listed in subsection 1 of [this] section **192.2150** regarding the detection and report of  
22 abuse and neglect [pursuant to this section].

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

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

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

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

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

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

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



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

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

74           13.] **3.** The department shall establish a quality assurance and supervision process for  
75 clients that requires an in-home services provider agency to conduct random visits to verify  
76 compliance with program standards and verify the accuracy of records kept by an in-home  
77 services employee.

78           [14. The department shall maintain the employee disqualification list and place on the  
79 employee disqualification list the names of any persons who have been finally determined by the  
80 department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or  
81 neglected an in-home services client or home health patient while employed by an in-home  
82 services provider agency or home health agency. For purposes of this section only, "knowingly"  
83 and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts  
84 "knowingly" with respect to the person's conduct when a reasonable person should be aware of  
85 the result caused by his or her conduct. A person acts "recklessly" when the person consciously  
86 disregards a substantial and unjustifiable risk that the person's conduct will result in serious  
87 physical injury and such disregard constitutes a gross deviation from the standard of care that a  
88 reasonable person would exercise in the situation.

89           15.] **4.** At the time a client has been assessed to determine the level of care as required  
90 by rule and is eligible for in-home services, the department shall conduct a "Safe at Home  
91 Evaluation" to determine the client's physical, mental, and environmental capacity. The  
92 department shall develop the safe at home evaluation tool by rule in accordance with chapter  
93 536, RSMo. The purpose of the safe at home evaluation is to assure that each client has the  
94 appropriate level of services and professionals involved in the client's care. The plan of service  
95 or care for each in-home services client shall be authorized by a nurse. The department may  
96 authorize the licensed in-home services nurse, in lieu of the department nurse, to conduct the  
97 assessment of the client's condition and to establish a plan of services or care. The department  
98 may use the expertise, services, or programs of other departments and agencies on a case-by-case  
99 basis to establish the plan of service or care. The department may, as indicated by the safe at  
100 home evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030,  
101 for evaluation and treatment as necessary.

102           [16.] **5.** Authorized nurse visits shall occur at least twice annually to assess the client and  
103 the client's plan of services. The provider nurse shall report the results of his or her visits to the  
104 client's case manager. If the provider nurse believes that the plan of service requires alteration,  
105 the department shall be notified and the department shall make a client evaluation. All  
106 authorized nurse visits shall be reimbursed to the in-home services provider. All authorized  
107 nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients  
108 whose services have reached one hundred percent of the average statewide charge for care and  
109 treatment in an intermediate care facility, provided that the services have been preauthorized by  
110 the department.

111           [17.] **6.** All in-home services clients shall be advised of their rights by the department  
112 at the initial evaluation. The rights shall include, but not be limited to, the right to call the  
113 department for any reason, including dissatisfaction with the provider or services. The  
114 department shall establish a process to receive such nonabuse and neglect calls other than the  
115 elder abuse and neglect hotline.

116           [18.] **7.** Subject to appropriations, all nurse visits authorized in **this section and** sections  
117 [660.250 to 660.300] **192.2100 to 192.2130** shall be reimbursed to the in-home services provider  
118 agency.

          [660.321.] **192.2184.** Notwithstanding any other provision of law, the department shall  
2 not disclose personally identifiable medical, social, personal, or financial records of any eligible  
3 adult being served by the [division of senior services] **department** except when disclosed in a  
4 manner that does not identify the eligible adult, or when ordered to do so by a court of competent  
5 jurisdiction. Such records shall be accessible without court order for examination and copying  
6 only to the following persons or offices, or to their designees:

- 7 (1) The department or any person or agency designated by the department for such  
8 purposes as the department may determine;
- 9 (2) The attorney general, to perform his or her constitutional or statutory duties;
- 10 (3) The department of mental health for residents placed through that department, to  
11 perform its constitutional or statutory duties;
- 12 (4) Any appropriate law enforcement agency, to perform its constitutional or statutory  
13 duties;
- 14 (5) The eligible adult, his or her legal guardian or any other person designated by the  
15 eligible adult; and
- 16 (6) The department of social services for individuals who receive Medicaid benefits, to  
17 perform its constitutional or statutory duties.

[660.310.] **192.2187.** 1. Notwithstanding any other provision of law, if the department  
2 of health and senior services proposes to deny, suspend, place on probation, or terminate an  
3 in-home services provider agency contract, the department of health and senior services shall  
4 serve upon the applicant or contractor written notice of the proposed action to be taken. The  
5 notice shall contain a statement of the type of action proposed, the basis for it, the date the action  
6 will become effective, and a statement that the applicant or contractor shall have thirty days from  
7 the date of mailing or delivery of the notice to file a complaint requesting a hearing before the  
8 administrative hearing commission. The administrative hearing commission may consolidate  
9 an applicant's or contractor's complaint with any proceeding before the administrative hearing  
10 commission filed by such contractor or applicant pursuant to subsection 3 of section 208.156,  
11 RSMo, involving a common question of law or fact. Upon the filing of the complaint, the  
12 provisions of sections 621.110, 621.120, 621.125, 621.135, and 621.145, RSMo, shall apply.  
13 With respect to cases in which the department has denied a contract to an in-home services  
14 provider agency, the administrative hearing commission shall conduct a hearing to determine the  
15 underlying basis for such denial. However, if the administrative hearing commission finds that  
16 the contract denial is supported by the facts and the law, the case need not be returned to the  
17 department. The administrative hearing commission's decision shall constitute affirmation of  
18 the department's contract denial.

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

21 3. The administrative hearing commission may stay the suspension or termination of an  
22 in-home services provider agency's contract, or the placement of the contractor on probation,  
23 pending the commission's findings and determination in the cause, upon such conditions, with  
24 or without the agreement of the parties, as the commission deems necessary and appropriate,  
25 including the posting of bond or other security except that the commission shall not grant a stay,

26 or if a stay has already been entered shall set aside its stay, unless the commission finds that the  
27 contractor has established that servicing the department's clients pending the commission's final  
28 determination would not present an imminent danger to the health, safety, or welfare of any  
29 client or a substantial probability that death or serious physical harm would result. The  
30 commission may remove the stay at any time that it finds that the contractor has violated any of  
31 the conditions of the stay. Such stay shall remain in effect, unless earlier removed by the  
32 commission, pending the decision of the commission and any subsequent departmental action  
33 at which time the stay shall be removed. In any case in which the department has refused to issue  
34 a contract, the commission shall have no authority to stay or to require the issuance of a contract  
35 pending final determination by the commission.

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

40 5. The administrative hearing commission shall make its final decision based upon the  
41 circumstances and conditions as they existed at the time of the action of the department and not  
42 based upon circumstances and conditions at the time of the hearing or decision of the  
43 commission.

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

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

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

- 3 (1) "Adult", an individual over the age of eighteen;
- 4 (2) "Adult day care program", a group program designed to provide care and supervision  
5 to meet the needs of functionally impaired adults for periods of less than twenty-four hours but  
6 more than two hours per day in a place other than the adult's own home;
- 7 (3) "Adult day care provider", the person, corporation, partnership, association or  
8 organization legally responsible for the overall operation of the adult day care program;
- 9 (4) "Department", the department of [social] **health and senior** services;
- 10 (5) "Director", the director of the division of aging;
- 11 (6) "Division", the division of aging;
- 12 (7) "Functionally impaired adult", an adult who by reason of age or infirmity requires  
13 care and supervision;

14 (8) "License", the document issued by the [division] **department** in accordance with the  
15 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** to an  
16 adult day care program which authorizes the adult day care provider to operate the program in  
17 accordance with the provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203**  
18 **to 192.2227** and the applicable rules promulgated pursuant thereto;

19 (9) "Participant", a functionally impaired adult who is enrolled in an adult day care  
20 program;

21 (10) "Person", any individual, firm, corporation, partnership, association, agency, or an  
22 incorporated or unincorporated organization regardless of the name used;

23 (11) "Provisional license", the document issued by the [division] **department** in  
24 accordance with the provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203**  
25 **to 192.2227** to an adult day care provider which is not currently meeting the requirements  
26 necessary to obtain a license;

27 (12) "Related", any of the following by blood, marriage or adoption: parent, child,  
28 grandchild, brother, sister, half-brother, half-sister, stepparent, uncle, aunt, niece, nephew, or first  
29 cousin;

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

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

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

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

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

12 (2) Local or state sanitation requirements;

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

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

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

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

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

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

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

29 5. Each license issued under sections [199.025, RSMo, and 660.403 to 660.420]  
30 **192.2203 to 192.2227** shall include the name of the provider, owner and operator; the name of  
31 the adult day care program; the location of the adult day care program; the hours of operations;  
32 the number and any limitations or the type of participants who may be served; and the period for  
33 which such license is valid.

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

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

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

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

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

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

11 (5) Any adult day care program licensed by the department of mental health under  
12 chapter 630, RSMo, which provides care, treatment and habilitation exclusively to adults who

13 have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental  
14 disability as defined;

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

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

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

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

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

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

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

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

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

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

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

12 2. The administrative hearing commission may stay the revocation or suspension of such  
13 certificate or license, pending the commission's findings and determination in the cause, upon  
14 such conditions as the commission deems necessary and appropriate including the posting of  
15 bond or other security; except that, the commission shall not grant a stay or if a stay has already  
16 been entered shall set aside its stay, if, upon application of the [division] **department**, the  
17 commission finds reason to believe that continued operation of the facility to which the  
18 certificate or license in question applies pending the commission's final determination would  
19 present an imminent danger to the health, safety or welfare of any person or a substantial



20 probability that death or serious physical harm would result. In any case in which the [division]  
21 **department** has refused to issue a certificate or license, the commission shall have no authority  
22 to stay or to require the issuance of a license pending final determination by the commission.

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

[660.418.] **192.2224**. The director [of the division] shall have the authority to promulgate  
2 rules pursuant to this section and chapter 536, RSMo, in order to carry out the provisions of  
3 sections [199.025, RSMo, and 660.403 to 660.420]. No rule or portion of a rule promulgated  
4 under the authority of section 199.025, RSMo, and sections 660.403 to 660.420 shall become  
5 effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo]  
6 **192.2203 to 192.2227**. Any rule or portion of a rule, as that term is defined in section  
7 **536.010**, RSMo, that is created under the authority delegated in sections **192.2203 to**  
8 **192.2227** shall become effective only if it complies with and is subject to all of the  
9 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections  
10 **192.2203 to 192.2227** and chapter 536, RSMo, are nonseverable and if any of the powers  
11 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
12 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,  
13 then the grant of rulemaking authority and any rule proposed or adopted after August 28,  
14 **2006**, shall be invalid and void.

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

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

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

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

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

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

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

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

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

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

5 (2) "Administrator", the person who is in general administrative charge of a facility;

6 (3) "Affiliate":

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

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

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

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

- 14 (4) "Department", the Missouri department of health and senior services;
- 15 (5) "Emergency", a situation, physical condition or one or more practices, methods or  
16 operations which presents imminent danger of death or serious physical or mental harm to  
17 residents of a facility;
- 18 (6) "Facility", any residential care facility I, residential care facility II, immediate care  
19 facility, or skilled nursing facility;
- 20 (7) "Health care provider", any person providing health care services or goods to  
21 residents and who receives funds in payment for such goods or services under Medicaid;
- 22 (8) "Intermediate care facility", any premises, other than a residential care facility I,  
23 residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or  
24 manager to provide twenty-four hour accommodation, board, personal care, and basic health and  
25 nursing care services under the daily supervision of a licensed nurse and under the direction of  
26 a licensed physician to three or more residents dependent for care and supervision and who are  
27 not related within the fourth degree of consanguinity or affinity to the owner, operator or  
28 manager of the facility;
- 29 (9) "Manager", any person other than the administrator of a facility who contracts or  
30 otherwise agrees with an owner or operator to supervise the general operation of a facility,  
31 providing such services as hiring and training personnel, purchasing supplies, keeping financial  
32 records, and making reports;
- 33 (10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in  
34 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42  
35 U.S.C. 301 et seq.), as amended;
- 36 (11) "Neglect", the failure to provide, by those responsible for the care, custody, and  
37 control of a resident in a facility, the services which are reasonable and necessary to maintain the  
38 physical and mental health of the resident, when such failure presents either an imminent danger  
39 to the health, safety or welfare of the resident or a substantial probability that death or serious  
40 physical harm would result;
- 41 (12) "Operator", any person licensed or required to be licensed under the provisions of  
42 sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;
- 43 (13) "Owner", any person who owns an interest of five percent or more in:
- 44 (a) The land on which any facility is located;
- 45 (b) The structure or structures in which any facility is located;
- 46 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by  
47 the land or structure in or on which a facility is located; or
- 48 (d) Any lease or sublease of the land or structure in or on which a facility is located.
- 49

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

53 (14) "Protective oversight", an awareness twenty-four hours a day of the location of a  
54 resident, the ability to intervene on behalf of the resident, the supervision of nutrition,  
55 medication, or actual provisions of care, and the responsibility for the welfare of the resident,  
56 except where the resident is on voluntary leave;

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

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

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

76 (18) "Skilled nursing facility", any premises, other than a residential care facility I, a  
77 residential care facility II, or an intermediate care facility, which is utilized by its owner, operator  
78 or manager to provide for twenty-four hour accommodation, board and skilled nursing care and  
79 treatment services to at least three residents who are not related within the fourth degree of  
80 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care  
81 and treatment services are those services commonly performed by or under the supervision of  
82 a registered professional nurse for individuals requiring twenty-four hours a day care by licensed  
83 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or  
84 infirm, the administration of medications and treatments as prescribed by a licensed physician  
85 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

86 (19) "Vendor", any person selling goods or services to a health care provider;

87 (20) "Voluntary leave", an off-premise leave initiated by:

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

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

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

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

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

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

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

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

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

[660.603.] **198.703.** 1. There is hereby established within the department of health and  
2 senior services the "Office of State Ombudsman for Long-Term Care Facility Residents", for the  
3 purpose of helping to assure the adequacy of care received by residents of long-term care  
4 facilities and to improve the quality of life experienced by them, in accordance with the federal  
5 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 her  
7 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 department shall establish and implement procedures for resolution of complaints.  
14 The ombudsman or representatives of the office shall have the authority to:

15 (1) Enter any long-term care facility and have access to residents of the facility at a  
16 reasonable time and in a reasonable manner. The ombudsman shall have access to review

17 resident records, if given permission by the resident or the resident's legal guardian. Residents  
18 of the facility shall have the right to request, deny, or terminate visits with an ombudsman;

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

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

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

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

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

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

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

40 (2) Establish and conduct training seminars, meetings and other programs for volunteers;  
41 and

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

44 10. The regional ombudsman coordinators and ombudsman volunteers shall have the  
45 authority to report instances of abuse and neglect to the ombudsman hotline operated by the  
46 department.

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

51           12. The office shall prepare and distribute to each facility written notices which set forth  
52 the address and telephone number of the office, a brief explanation of the function of the office,  
53 the procedure to follow in filing a complaint and other pertinent information.

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

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

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

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

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

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

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

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

[660.608.] **198.708.** 1. Any regional coordinator or local program staff, whether an  
2 employee or an unpaid volunteer, shall be treated as a representative of the office. No  
3 representative of the office shall be held liable for good faith performance of his **or her** official  
4 duties under the provisions of sections [660.600 to 660.608] **198.700 to 198.708** and shall be

5 immune from suit for the good faith performance of such duties. Every representative of the  
6 office shall be considered a state employee under section 105.711, RSMo.

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

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

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

13         2. Participating vendors shall be responsible for:

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

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



26           4. No state or federal financial assistance shall be authorized or expended to pay for  
27 personal care assistance services provided by a personal care attendant who is listed on **the**  
28 **employee disqualification list maintained by the department of health and senior services**  
29 **under section 192.2150, RSMo, or** any of the background check lists in the family care safety  
30 registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is first obtained  
31 from the department in accordance with section 660.317, RSMo.

          210.906. 1. Every child-care worker or elder-care worker hired on or after January 1,  
2 2001, or personal-care worker hired on or after January 1, 2002, shall complete a registration  
3 form provided by the department. The department shall make such forms available no later than  
4 January 1, 2001, and may, by rule, determine the specific content of such form, but every form  
5 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 the  
8 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 employment purposes only.

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

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

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

28          5. Any person not required to register pursuant to the provisions of sections 210.900 to  
29 210.936 may also be included in the registry if such person voluntarily applies to the department

30 for registration and meets the requirements of this section and section 210.909, including  
31 submitting to the background checks in subsection 1 of section 210.909.

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

2 [197.500. 1. The department shall maintain an employee disqualification  
3 list and place on the employee disqualification list the names of any persons who  
4 are or who have been employed by any entity licensed pursuant to this chapter  
5 and who have been finally determined by the department pursuant to section  
6 660.315, RSMo, to have knowingly or recklessly abused or neglected a patient.  
7 For the purpose of this section, "abuse" and "neglect" shall have the same  
8 meanings as such terms are defined in section 198.006, RSMo. For purposes of  
9 this section only, "knowingly" and "recklessly" shall have the meanings that are  
10 ascribed to them in this section. A person acts "knowingly" with respect to the  
11 person's conduct when a reasonable person should be aware of the result caused  
12 by his or her conduct. A person acts "recklessly" when the person consciously  
13 disregards a substantial and unjustifiable risk that the person's conduct will result  
14 in serious physical injury and such disregard constitutes a gross deviation from  
15 the standard of care that a reasonable person would exercise in the situation.

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

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 department 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 or her own use or the use of the in-home services provider agency  
13 or 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, is guilty of a class A misdemeanor.

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

19 5. If the investigation indicates probable misappropriation of property 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 the  
21 investigator's report to the department director or the director's designee for  
22 appropriate action.

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

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

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

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

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

47

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

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

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

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

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

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

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

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

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

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