

HOUSE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
SENATE BILLS NOS. 670 & 684

1 AN ACT

2 To repeal sections 191.900, 191.910, 197.310,  
3 197.317, 197.318, 197.340, 197.367, 197.455,  
4 198.012, 198.022, 198.026, 198.029, 198.032,  
5 198.036, 198.039, 198.067, 198.070, 198.073,  
6 198.080, 198.082, 198.085, 198.088, 198.093,  
7 198.115, 198.525, 198.526, 198.531, 565.186,  
8 565.188, 630.140, 630.167, 660.250, 660.260,  
9 660.263, 660.270 and 660.300, RSMo, and to  
10 enact in lieu thereof fifty-four new sections  
11 relating to protection of the elderly, with  
12 penalty provisions.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
14 AS FOLLOWS:

15 Section A. Sections 191.900, 191.910, 197.310, 197.317,  
16 197.318, 197.340, 197.367, 197.455, 198.012, 198.022, 198.026,  
17 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073,  
18 198.080, 198.082, 198.085, 198.088, 198.093, 198.115, 198.525,  
19 198.526, 198.531, 565.186, 565.188, 630.140, 630.167, 660.250,  
20 660.260, 660.263, 660.270 and 660.300, RSMo, are repealed and

**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 boldface type in the above law is new proposed language.**

1 fifty-four sections enacted in lieu thereof, to be known as  
2 sections 191.900, 191.910, 197.310, 197.317, 197.318, 197.340,  
3 197.370, 197.455, 198.012, 198.019, 198.022, 198.026, 198.029,  
4 198.030, 198.032, 198.036, 198.039, 198.046, 198.067, 198.068,  
5 198.070, 198.073, 198.074, 198.080, 198.082, 198.085, 198.088,  
6 198.093, 198.094, 198.115, 198.345, 198.525, 198.526, 198.531,  
7 354.407, 565.186, 565.188, 565.200, 630.140, 630.167, 660.071,  
8 660.250, 660.252, 660.260, 660.263, 660.270, 660.300, 660.302,  
9 660.322, 660.630, 1, 2, 3, and 4 to read as follows:

10 191.900. As used in sections 191.900 to 191.910, the  
11 following terms mean:

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

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

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

23 (4) "Health care", any service, assistance, care, product,  
24 device or thing provided pursuant to a medical assistance

1 program, or for which payment is requested or received, in whole  
2 or part, pursuant to a medical assistance program;

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

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

10 (7) "Health care provider", any person [delivering] who is  
11 paid to deliver, or [purporting] purports to deliver, any health  
12 care, and including any employee, agent or other representative  
13 of such a person;

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

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

3           191.910. 1. The attorney general shall have authority to  
4 investigate alleged or suspected violations of sections 191.900  
5 to 191.910, or section 198.070, RSMo, if related to a violation  
6 of sections 191.900 to 191.910 and shall have all powers provided  
7 by sections 407.040 to 407.090, RSMo, in connection with  
8 investigations of alleged or suspected violations of sections  
9 191.900 to 191.910, or section 198.070, RSMo, if related to a  
10 violation of sections 191.900 to 191.910 as if the acts  
11 enumerated in subsections 1 to 3 of section 191.905 are unlawful  
12 acts proscribed by chapter 407, RSMo, provided that if the  
13 attorney general exercises such powers, the provisions of section  
14 407.070, RSMo, shall also be applicable; and may exercise all of  
15 the powers provided by subsections 1 and 2 of section 578.387,  
16 RSMo, in connection with investigations of alleged or suspected  
17 violations of sections 191.900 to 191.910, as if the acts  
18 enumerated in subsections 1 to 3 of section 191.905 involve  
19 "public assistance" as defined by section 578.375, RSMo. The  
20 attorney general and [his] the attorney general's authorized  
21 investigators shall be authorized to serve all subpoenas and  
22 civil process related to the enforcement of sections 191.900 to  
23 191.910, or section 198.070, RSMo, if related to a violation of  
24 sections 191.900 to 191.910 and chapter 407, RSMo. In order for

1 the attorney general to commence a state prosecution for  
2 violations of sections 191.900 to 191.910, the attorney general  
3 shall prepare and forward a report of the violations to the  
4 appropriate prosecuting attorney. Upon receiving a referral, the  
5 prosecuting attorney shall either commence a prosecution based on  
6 the report by the filing of a complaint, information, or  
7 indictment within sixty days of receipt of said report or shall  
8 file a written statement with the attorney general explaining why  
9 criminal charges should not be brought. This time period may be  
10 extended by the prosecuting attorney with the agreement of the  
11 attorney general for an additional sixty days. If the  
12 prosecuting attorney commences a criminal prosecution, the  
13 attorney general or [his] the attorney general's designee shall  
14 be permitted by the court to participate as a special assistant  
15 prosecuting attorney in settlement negotiations and all court  
16 proceedings, subject to the authority of the prosecuting  
17 attorney, for the purpose of providing such assistance as may be  
18 necessary. If the prosecuting attorney fails to commence a  
19 prosecution and fails to file a written statement listing the  
20 reasons why criminal charges should not be brought within the  
21 appropriate time period, or declines to prosecute on the basis of  
22 inadequate office resources, the attorney general [shall have  
23 authority to] may commence prosecutions for violations of  
24 sections 191.900 to 191.910, or section 198.070, RSMo, if related

1 to a violation of sections 191.900 to 191.910. In cases where a  
2 defendant pursuant to a common scheme or plan has committed acts  
3 which constitute or would constitute violations of sections  
4 191.900 to 191.910, or section 198.070, RSMo, if related to a  
5 violation of sections 191.900 to 191.910 in more than one state,  
6 the attorney general shall have the authority to represent the  
7 state of Missouri in any plea agreement which resolves all  
8 criminal prosecutions within and without the state, and such  
9 agreement shall be binding on all state prosecutors.

10 2. In any investigation, hearing or other proceeding  
11 pursuant to sections 191.900 to 191.910, or section 198.070,  
12 RSMo, if related to a violation of sections 191.900 to 191.910  
13 any record in the possession or control of a health care  
14 provider, or in the possession or control of another person on  
15 behalf of a health care provider, including but not limited to  
16 any record relating to patient care, business or accounting  
17 records, payroll records and tax records, whether written or in  
18 an electronic format, shall be made available by the health care  
19 provider to the attorney general or the court, and shall be  
20 admissible into evidence, regardless of any statutory or common  
21 law privilege which such health care provider, record custodian  
22 or patient might otherwise invoke or assert. The provisions of  
23 section 326.151, RSMo, shall not apply to actions brought  
24 pursuant to sections 191.900 to 191.910. The attorney general

1 shall not disclose any record obtained pursuant to this section,  
2 other than in connection with a proceeding instituted or pending  
3 in any court or administrative agency. The access, provision,  
4 use, and disclosure of records or material subject to the  
5 provisions of 42 U.S.C. section 290dd-2 shall be subject to said  
6 section, as may be amended from time to time, and to regulations  
7 promulgated pursuant to said section.

8 3. Sections 191.900 to 191.910 shall not be construed to  
9 prohibit or limit any other criminal or civil action against a  
10 health care provider for the violation of any other law. Any  
11 complaint, investigation or report received or completed pursuant  
12 to sections 198.070 and 198.090, RSMo, subsection 2 of section  
13 205.967, RSMo, sections 375.991 to 375.994, RSMo, section  
14 578.387, RSMo, or sections 660.300 and 660.305, RSMo, which  
15 indicates a violation of sections 191.900 to 191.910, shall be  
16 referred to the attorney general. A referral to the attorney  
17 general pursuant to this subsection shall not preclude the  
18 agencies charged with enforcing the foregoing sections from  
19 conducting investigations, providing protective services or  
20 taking administrative action regarding the complaint,  
21 investigation or report referred to the attorney general, as may  
22 be provided by such sections; provided that all material  
23 developed by the attorney general in the course of an  
24 investigation pursuant to sections 191.900 to 191.910 shall not

1 be subject to subpoena, discovery, or other legal or  
2 administrative process in the course of any such administrative  
3 action. Sections 191.900 to 191.910 take precedence over the  
4 provisions of sections 198.070 and 198.090, RSMo, subsection 2 of  
5 section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section  
6 578.387, RSMo, and sections 660.300 and 660.305, RSMo, to the  
7 extent such provisions are inconsistent or overlap.

8 197.310. 1. The "Missouri Health Facilities Review  
9 Committee" is hereby established. [The agency shall provide  
10 clerical and administrative support to the committee. The  
11 committee may employ additional staff as it deems necessary.]  
12 The department of health and senior services shall hire and  
13 administratively supervise any clerical and administrative  
14 support staff to the committee.

15 2. The committee shall be composed of:

16 (1) Two members of the senate appointed by the president  
17 pro tem, who shall be from different political parties; and

18 (2) Two members of the house of representatives appointed  
19 by the speaker, who shall be from different political parties;  
20 and

21 (3) Five members appointed by the governor with the advice  
22 and consent of the senate, not more than three of whom shall be  
23 from the same political party.

24 3. No business of this committee shall be performed without

1 a majority of the full body.

2 4. The members shall be appointed as soon as possible after  
3 September 28, 1979. One of the senate members, one of the house  
4 members and three of the members appointed by the governor shall  
5 serve until January 1, 1981, and the remaining members shall  
6 serve until January 1, 1982. All subsequent members shall be  
7 appointed in the manner provided in subsection 2 of this section  
8 and shall serve terms of two years. The minority legislative  
9 members of the house of representatives and senate shall be  
10 appointed by the minority floor leader of each respective body.

11 5. The committee shall elect a chairman at its first  
12 meeting which shall be called by the governor. The committee  
13 shall meet upon the call of the chairman or the governor.

14 6. The committee shall review and approve or disapprove all  
15 applications for a certificate of need made under sections  
16 197.300 to 197.366. It shall issue reasonable rules and  
17 regulations governing the submission, review and disposition of  
18 applications.

19 7. Members of the committee shall serve without  
20 compensation but shall be reimbursed for necessary expenses  
21 incurred in the performance of their duties.

22 8. Notwithstanding the provisions of subsection 4 of  
23 section 610.025, RSMo, the proceedings and records of the  
24 facilities review committee shall be subject to the provisions of

1 chapter 610, RSMo.

2 197.317. 1. After July 1, 1983, no certificate of need  
3 shall be issued for the following:

4 (1) Additional residential care facility I, residential  
5 care facility II, intermediate care facility or skilled nursing  
6 facility beds above the number then licensed by this state;

7 (2) Beds in a licensed hospital to be reallocated on a  
8 temporary or permanent basis to nursing care or beds in a  
9 long-term care hospital meeting the requirements described in 42  
10 CFR, Section 412.23(e), excepting those which are not subject to  
11 a certificate of need pursuant to paragraphs (e) and (g) of  
12 subdivision (10) of section 197.305; nor

13 (3) The reallocation of intermediate care facility or  
14 skilled nursing facility beds of existing licensed beds by  
15 transfer or sale of licensed beds between a hospital licensed  
16 pursuant to this chapter or a nursing care facility licensed  
17 pursuant to chapter 198, RSMo; except for beds in counties in  
18 which there is no existing nursing care facility. No certificate  
19 of need shall be issued for the reallocation of existing  
20 residential care facility I or II, or intermediate care  
21 facilities operated exclusively for the mentally retarded to  
22 intermediate care or skilled nursing facilities or beds.

23 However, after January 1, [2003] 2007, nothing in this section  
24 shall prohibit the Missouri health facilities review committee

1 from issuing a certificate of need for additional beds in  
2 existing health care facilities or for new beds in new health  
3 care facilities or for the reallocation of licensed beds,  
4 provided that no construction shall begin prior to [January 1,  
5 2004] July 1, 2007. The provisions of subsections 16 and 17 of  
6 section 197.315 shall apply to the provisions of this section.

7 2. The health facilities review committee shall utilize  
8 demographic data from the office of social and economic data  
9 analysis, or its successor organization, at the University of  
10 Missouri as their source of information in considering  
11 applications for new institutional long-term care facilities.

12 197.318. 1. The provisions of section 197.317 shall not  
13 apply to a residential care facility I, residential care facility  
14 II, intermediate care facility or skilled nursing facility only  
15 where the department of [social] health and senior services has  
16 first determined that there presently exists a need for  
17 additional beds of that classification because the average  
18 occupancy of all licensed and available residential care facility  
19 I, residential care facility II, intermediate care facility and  
20 skilled nursing facility beds exceeds ninety percent for at least  
21 four consecutive calendar quarters, in a particular county, and  
22 within a fifteen-mile radius of the proposed facility, and the  
23 facility otherwise appears to qualify for a certificate of need.  
24 The department's certification that there is no need for

1 additional beds shall serve as the final determination and  
2 decision of the committee. In determining ninety percent  
3 occupancy, residential care facility I and II shall be one  
4 separate classification and intermediate care and skilled nursing  
5 facilities are another separate classification.

6 2. The Missouri health facilities review committee may, for  
7 any facility certified to it by the department, consider the  
8 predominant ethnic or religious composition of the residents to  
9 be served by that facility in considering whether to grant a  
10 certificate of need.

11 3. There shall be no expenditure minimum for facilities,  
12 beds, or services referred to in subdivisions (1), (2) and (3) of  
13 section 197.317. The provisions of this subsection shall expire  
14 January 1, [2003] 2007.

15 4. As used in this section, the term "licensed and  
16 available" means beds which are actually in place and for which a  
17 license has been issued.

18 5. The provisions of section 197.317 shall not apply to any  
19 facility where at least ninety-five percent of the patients  
20 require diets meeting the dietary standards defined by section  
21 196.165, RSMo.

22 6. The committee shall review all letters of intent and  
23 applications for long-term care hospital beds meeting the  
24 requirements described in 42 CFR, Section 412.23(e) under its

1 criteria and standards for long-term care beds.

2 7. Sections 197.300 to 197.366 shall not be construed to  
3 apply to litigation pending in state court on or before April 1,  
4 1996, in which the Missouri health facilities review committee is  
5 a defendant in an action concerning the application of sections  
6 197.300 to 197.366 to long-term care hospital beds meeting the  
7 requirements described in 42 CFR, Section 412.23(e). 8.

8 Notwithstanding any other provision of this chapter to the  
9 contrary:

10 (1) A facility licensed pursuant to chapter 198, RSMo, may  
11 increase its licensed bed capacity by:

12 (a) Submitting a letter of intent to expand to the  
13 [division of aging] department of health and senior services and  
14 the health facilities review committee;

15 (b) Certification from the [division of aging] department  
16 of health and senior services that the facility:

17 a. Has no patient care class I deficiencies within the last  
18 eighteen months; and

19 b. Has maintained a ninety-percent average occupancy rate  
20 for the previous six quarters;

21 (c) Has made an effort to purchase beds for [eighteen]  
22 twelve months following the date the letter of intent to expand  
23 is submitted pursuant to paragraph (a) of this subdivision. For  
24 purposes of this paragraph, an "effort to purchase" means a copy

1 certified by the offeror as an offer to purchase beds from  
2 another licensed facility in the same licensure category; and

3 (d) If an agreement is reached by the selling and  
4 purchasing entities, the health facilities review committee shall  
5 issue a certificate of need for the expansion of the purchaser  
6 facility upon surrender of the seller's license; or

7 (e) If no agreement is reached by the selling and  
8 purchasing entities, the health facilities review committee shall  
9 permit an expansion for:

10 a. A facility with more than forty beds may expand its  
11 licensed bed capacity within the same licensure category by  
12 twenty-five percent or thirty beds, whichever is greater, if that  
13 same licensure category in such facility has experienced an  
14 average occupancy of [ninety-three] ninety percent or greater  
15 over the previous [six] four quarters;

16 b. A facility with fewer than forty beds may expand its  
17 licensed bed capacity within the same licensure category by  
18 twenty-five percent or ten beds, whichever is greater, if that  
19 same licensure category in such facility has experienced an  
20 average occupancy of [ninety-two] ninety percent or greater over  
21 the previous [six] four quarters;

22 c. A facility adding beds pursuant to subparagraphs a. or  
23 b. of this paragraph shall not expand by more than fifty percent  
24 of its then licensed bed capacity in the qualifying licensure

1 category;

2 (2) Any beds sold shall, for five years from the date of  
3 relicensure by the purchaser, remain unlicensed and unused for  
4 any long-term care service in the selling facility, whether they  
5 do or do not require a license;

6 (3) [The beds purchased shall, for two years from the date  
7 of purchase, remain in the bed inventory attributed to the  
8 selling facility and be considered by the department of social  
9 services as licensed and available for purposes of this section;

10 (4) Any residential care facility licensed pursuant to  
11 chapter 198, RSMo, may relocate any portion of such facility's  
12 current licensed beds to any other facility to be licensed within  
13 the same licensure category if both facilities are under the same  
14 licensure ownership or control, and are located within six miles  
15 of each other] Subject to the provisions of this section, any  
16 facility licensed pursuant to chapter 198, RSMo, may relocate up  
17 to twenty-five of such facility's currently licensed beds to any  
18 other facility of the same licensure category under common  
19 licensure ownership and control, provided that the relocated beds  
20 remain under the same licensure category. Such facility may  
21 relocate up to fifteen of such facility's currently licensed beds  
22 to any other facility of a different licensure category under  
23 common licensure ownership and control, however, such relocated  
24 beds must remain under the same licensure category;

1           (5) A facility licensed pursuant to chapter 198, RSMo, may  
2 transfer or sell individual long-term care licensed beds to  
3 facilities qualifying pursuant to paragraphs (a) and (b) of  
4 subdivision (1) of this subsection. Any facility which transfers  
5 or sells licensed beds shall not expand its licensed bed capacity  
6 in that licensure category for a period of five years from the  
7 date the licensure is relinquished.

8           9. Any existing licensed and operating health care facility  
9 offering long-term care services may replace one-half of its  
10 licensed beds at the same site or a site not more than thirty  
11 miles from its current location if, for at least the most recent  
12 four consecutive calendar quarters, the facility operates only  
13 fifty percent of its then licensed capacity with every resident  
14 residing in a private room. In such case:

15           (1) The facility shall report to the [division of aging]  
16 department of health and senior services vacant beds as  
17 unavailable for occupancy for at least the most recent four  
18 consecutive calendar quarters;

19           (2) The replacement beds shall be built to private room  
20 specifications and only used for single occupancy; and

21           (3) The existing facility and proposed facility shall have  
22 the same owner or owners, regardless of corporate or business  
23 structure, and such owner or owners shall stipulate in writing  
24 that the existing facility beds to be replaced will not later be

1 used to provide long-term care services. If the facility is  
2 being operated under a lease, both the lessee and the owner of  
3 the existing facility shall stipulate the same in writing.

4 10. Nothing in this section shall prohibit a health care  
5 facility licensed pursuant to chapter 198, RSMo, from being  
6 replaced in its entirety within fifteen miles of its existing  
7 site so long as the existing facility and proposed or replacement  
8 facility have the same owner or owners regardless of corporate or  
9 business structure and the health care facility being replaced  
10 remains unlicensed and unused for any long-term care services  
11 whether they do or do not require a license from the date of  
12 licensure of the replacement facility.

13 197.340. 1. Any health facility providing a health service  
14 must notify the committee of any discontinuance of any previously  
15 provided health care service, a decrease in the number of  
16 licensed beds by ten percent or more, or the change in licensure  
17 category for any such facility.

18 2. Any health facility providing a health service shall  
19 notify the committee annually of the number of licensed beds that  
20 are unavailable. Beginning January 1, 2003, the committee shall  
21 collect for deposit in the general revenue fund an annual  
22 surcharge of one thousand dollars for each licensed but  
23 unavailable bed for health facilities certified pursuant to  
24 chapter 198, RSMo. Such surcharge shall be applied only to the

1 number of licensed but unavailable beds that exceed ten percent  
2 of the total licensed beds owned by the facility, and shall be  
3 applied if a bed is classified as unavailable at anytime during  
4 the year. Any bed that is unavailable due to renovation may be  
5 exempt from the surcharge if such renovation lasts longer than  
6 thirty days and is completed within six months. The surcharge  
7 shall not be charged on new facilities during the first two years  
8 of operation.

9 197.370. 1. As used in this section, the term "continuing  
10 care retirement community" means:

11 (1) Housing planned and operated to provide a continuum of  
12 care for adults sixty-five years of age or older or couples one  
13 of whom is sixty-five years of age or older requiring different  
14 levels of care to remain in the same location as their spouses or  
15 friends. This continuum of care shall include independent  
16 living, residential care I or residential care II and  
17 intermediate or skilled nursing care, defined as follows:

18 (a) "Independent living", a building or buildings or any  
19 group housing and services program, other than a skilled nursing  
20 facility, intermediate care facility, or residential care  
21 facility I or II for three or more unrelated adults that promotes  
22 resident self-direction and participation in decisions that  
23 emphasize choice, dignity, privacy, individuality, independence  
24 and home-like surroundings;

1           (b) "Intermediate care facility", as defined in section  
2 198.006, RSMo;

3           (c) "Residential care facility I" or "residential care  
4 facility II", as defined in section 198.006, RSMo; and

5           (d) "Skilled nursing care facility", as defined in section  
6 198.006, RSMo; and

7           (2) Independent living services provided through contracts  
8 which provide for such services for one year or more and may  
9 include entrance or endowment fees in addition to monthly  
10 charges.

11           2. Continuing care retirement communities, which contain in  
12 their certificate of need application plans which when completed  
13 will consist of a minium of fifty independent living units and a  
14 minimum of thirty residential care facility beds and thirty  
15 skilled nursing facility beds and all facilities are located on  
16 contiguous property, shall be exempt from the requirements of  
17 sections 197.317 and 197.318 for the establishment or addition of  
18 long-term care beds.

19           3. Any licensed facility as defined in section 198.006,  
20 RSMo, which has been licensed for more than three years and has  
21 failed to achieve an occupancy level for the last six quarters of  
22 fifty-five percent or higher, shall relinquish to the certificate  
23 of need program the excess beds over sixty-five percent of  
24 licensed beds. The facility may regain these beds after

1 obtaining a ninety percent occupancy on the remaining beds for  
2 six consecutive quarters. For purposes of this section, periods  
3 of major renovation affecting bed availability shall not be  
4 counted in the six quarters.

5 4. Any person who owns a continuing care retirement  
6 community as defined by this section may:

7 (1) Relocate beds to any other continuing care retirement  
8 community with mutual ownership; or

9 (2) Change the licensure category of beds and relocate them  
10 to any other continuing care retirement community with mutual  
11 ownership.

12 197.455. [The department may file an action in the circuit  
13 court for the county in which any home health agency alleged to  
14 be violating the provisions of sections 197.400 to 197.475  
15 resides or may be found for an injunction to restrain the home  
16 health agency from continuing the violation.] An action may be  
17 brought by the department, or by the attorney general on his or  
18 her own volition or at the request of the department or any other  
19 appropriate state agency, to temporarily or permanently enjoin or  
20 restrain any violation of sections 197.400 to 197.477, to enjoin  
21 the acceptance of new clients until substantial compliance with  
22 sections 197.400 to 197.477 is achieved, or to enjoin any  
23 specific action or practice of the agency. Such action shall be  
24 brought in the circuit court for the county in which the agency

1 is located. Any action brought pursuant to the provisions of  
2 this section shall be placed at the head of the docket by the  
3 court, and the court shall hold a hearing on any action brought  
4 pursuant to the provisions of this section no less than fifteen  
5 days after the filing of the action.

6 198.012. 1. The provisions of sections 198.003 to 198.136  
7 shall not apply to any of the following entities:

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

10 (2) Any facility or other entity otherwise licensed by the  
11 state and operating exclusively under such license and within the  
12 limits of such license, unless the activities and services are or  
13 are held out as being activities or services normally provided by  
14 a licensed facility under sections 198.003 to 198.186, 198.200,  
15 208.030, and 208.159, RSMo, except hospitals licensed under the  
16 provisions of chapter 197, RSMo;

17 (3) Any hospital licensed under the provisions of chapter  
18 197, RSMo, provided that the residential care facility II,  
19 intermediate care facility or skilled nursing facility are  
20 physically attached to the acute care hospital; and provided  
21 further that the department of health and senior services in  
22 promulgating rules, regulations and standards pursuant to section  
23 197.080, RSMo, with respect to such facilities, shall establish  
24 requirements and standards for such hospitals consistent with the

1 intent of this chapter, and sections 198.067, 198.070, 198.090,  
2 198.093 and 198.139 to 198.180 shall apply to every residential  
3 care facility II, intermediate care facility or skilled nursing  
4 facility regardless of physical proximity to any other health  
5 care facility;

6 (4) Any facility licensed pursuant to sections 630.705 to  
7 630.760, RSMo, which provides care, treatment, habilitation and  
8 rehabilitation exclusively to persons who have a primary  
9 diagnosis of mental disorder, mental illness, mental retardation  
10 or developmental disabilities, as defined in section 630.005,  
11 RSMo;

12 (5) Any provider of care under a life care contract, except  
13 to any portion of the provider's premises on which the provider  
14 offers services provided by an intermediate care facility or  
15 skilled nursing facility as defined in section 198.006. For the  
16 purposes of this section, "provider of care under a life care  
17 contract" means any person contracting with any individual to  
18 furnish specified care and treatment to the individual for the  
19 life of the individual, with significant prepayment for such care  
20 and treatment;

21 (6) Any entity that:

22 (a) Has presented its operating model to the department of  
23 health and senior services or the department of social services  
24 prior to beginning operation;

1           (b) Has received a letter from the department confirming  
2 that no licensure or certification is required for such operating  
3 model;

4           (c) Continues to follow the model presented to the  
5 department; and

6           (d) Has received zoning or other governmental approval  
7 prior to April 20, 2001, for no more than two additional  
8 properties to be operated according to the previously approved  
9 model.

10           2. Nothing in this section shall prohibit any of these  
11 entities from applying for a license under sections 198.003 to  
12 198.136.

13           198.019. When the department of health and senior services  
14 issues a license for or renews the existing license of a  
15 facility, the department of health and senior services shall:

16           (1) Require all facility operators and owners, including  
17 part owners, to include in the application for licensure or  
18 renewal of licensure a list of all long-term care facilities,  
19 whether located in this state or another state, for which the  
20 operators and owners currently have or have had a financial  
21 interest, excluding the facility for which licensure or renewal  
22 of licensure is sought;

23           (2) Determine and consider the compliance history of the  
24 facilities listed in the application pursuant to subdivision (1)

1 of this section as facilities for which the owners and operators  
2 have or have had a financial interest. The department, based on  
3 the review of such compliance history, may deny licensure or  
4 renewal of licensure for the facility;

5 (3) Consider the compliance history of the operator of the  
6 facility and the facility for which licensure or renewal of  
7 licensure is sought. The department, based on the review of such  
8 compliance history, may deny licensure or renewal of licensure  
9 for the facility; and

10 (4) Include and consider any facility responses to survey  
11 findings in the official review made by the department.

12 198.022. 1. Upon receipt of an application for a license  
13 to operate a facility, the department shall review the  
14 application, investigate the applicant and the statements sworn  
15 to in the application for license and conduct any necessary  
16 inspections. A license shall be issued if the following  
17 requirements are met:

18 (1) The statements in the application are true and correct;

19 (2) The facility and the operator are in substantial  
20 compliance with the provisions of sections 198.003 to 198.096 and  
21 the standards established thereunder;

22 (3) The applicant has the financial capacity to operate the  
23 facility;

24 (4) The administrator of a residential care facility II, a

1 skilled nursing facility, or an intermediate care facility is  
2 currently licensed under the provisions of chapter 344, RSMo;

3 (5) Neither the operator nor any principals in the  
4 operation of the facility have ever been convicted of a felony  
5 offense concerning the operation of a long-term health care  
6 facility or other health care facility or ever knowingly acted or  
7 knowingly failed to perform any duty which materially and  
8 adversely affected the health, safety, welfare or property of a  
9 resident, while acting in a management capacity. The operator of  
10 the facility or any principal in the operation of the facility  
11 shall not be under exclusion from participation in the title  
12 XVIII (Medicare) or title XIX (Medicaid) program of any state or  
13 territory;

14 (6) Neither the operator nor any principals involved in the  
15 operation of the facility have ever been convicted of a felony in  
16 any state or federal court arising out of conduct involving  
17 either management of a long-term care facility or the provision  
18 or receipt of health care;

19 (7) All fees due to the state have been paid;

20 (8) If the applicant operates or has previously operated  
21 one or more long-term care facilities in this state or any  
22 equivalent facility or facilities in another state, the applicant  
23 has a satisfactory history of compliance with state and federal  
24 laws in the operation of all such long-term care facilities;

1           (9) The applicant has not had a license denied or revoked  
2 based upon lack of financial capacity in the five years prior to  
3 the date of application.

4           2. Upon denial of any application for a license, the  
5 department shall so notify the applicant in writing, setting  
6 forth therein the reasons and grounds for denial.

7           3. The department may inspect any facility and any records  
8 and may make copies of records, at the facility, at the  
9 department's own expense, required to be maintained by sections  
10 198.003 to 198.096 or by the rules and regulations promulgated  
11 thereunder at any time if a license has been issued to or an  
12 application for a license has been filed by the operator of such  
13 facility. Except as otherwise provided for in section 198.526,  
14 the department shall make at least two inspections per year, at  
15 least one of which shall be unannounced to the operator. The  
16 department may make such other inspections, announced or  
17 unannounced, as it deems necessary to carry out the provisions of  
18 sections 198.003 to 198.136.

19           4. Whenever the department has reasonable grounds to  
20 believe that a facility required to be licensed under sections  
21 198.003 to 198.096 is operating without a license, and the  
22 department is not permitted access to inspect the facility, or  
23 when a licensed operator refuses to permit access to the  
24 department to inspect the facility, the department shall apply to

1 the circuit court of the county in which the premises is located  
2 for an order authorizing entry for such inspection, and the court  
3 shall issue the order if it finds reasonable grounds for  
4 inspection or if it finds that a licensed operator has refused to  
5 permit the department access to inspect the facility.

6 198.026. 1. Whenever a duly authorized representative of  
7 the department finds upon an inspection of a facility that it is  
8 not in compliance with the provisions of sections 198.003 to  
9 198.096 and the standards established thereunder, the operator or  
10 administrator shall be informed of the deficiencies in an exit  
11 interview conducted with the operator or administrator or his  
12 designee. The department shall inform the operator or  
13 administrator, in writing, of any violation of a class I standard  
14 at the time the determination is made. A written report shall be  
15 prepared of any deficiency for which there has not been prompt  
16 remedial action, and a copy of such report and a written  
17 correction order shall be sent to the operator or administrator  
18 by certified mail or other delivery service that provides a dated  
19 receipt of delivery at the facility address within ten working  
20 days after the inspection, stating separately each deficiency and  
21 the specific statute or regulation violated.

22 2. The operator or administrator shall have five working  
23 days following receipt of a written report and correction order  
24 regarding a violation of a class I standard and ten working days

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

1 status of previously identified deficiencies.

2 3. For any violation or deficiency resulting in a notice of  
3 noncompliance and involving staffing issues directly related to  
4 patient care, the department may direct a facility to implement  
5 corrective actions relating to staffing, including but not  
6 limited to qualifications of staff, staffing ratios, training  
7 plans or plans for staff supervision. Such decision may be  
8 appealed to the administrative hearing commission; except that  
9 the commission shall not have the authority to stay the effect of  
10 the order pending final resolution of the case.

11 4. If, following the reinspection, the facility is found  
12 not in substantial compliance with sections 198.003 to 198.096  
13 and the standards established thereunder or the operator is not  
14 correcting the noncompliance in accordance with the approved plan  
15 of correction, the department shall issue a notice of  
16 noncompliance, which shall be sent by certified mail or other  
17 delivery service that provides a dated receipt of delivery to  
18 each person disclosed to be an owner or operator of the facility,  
19 according to the most recent information or documents on file  
20 with the department.

21 [4.] 5. The notice of noncompliance shall inform the  
22 operator or administrator that the department may seek the  
23 imposition of any of the sanctions and remedies provided for in  
24 section 198.067, or any other action authorized by law.

1           [5.] 6. At any time after an inspection is conducted, the  
2 operator may choose to enter into a consent agreement with the  
3 department to obtain a probationary license. The consent  
4 agreement shall include a provision that the operator will  
5 voluntarily surrender the license if substantial compliance is  
6 not reached in accordance with the terms and deadlines  
7 established under the agreement. The agreement shall specify the  
8 stages, actions and time span to achieve substantial compliance.

9           [6.] 7. Whenever a notice of noncompliance has been issued,  
10 the operator shall post a copy of the notice of noncompliance and  
11 a copy of the most recent inspection report in a conspicuous  
12 location in the facility, and the department shall send a copy of  
13 the notice of noncompliance to the division of family services of  
14 the department of social services, the department of mental  
15 health, and any other concerned federal, state or local  
16 governmental agencies.

17           198.029. The provisions of section 198.026 notwithstanding,  
18 whenever a duly authorized representative of the department finds  
19 upon inspection of a licensed facility, and the director of the  
20 department finds upon review, that the facility or the operator  
21 is not in substantial compliance with a standard or standards the  
22 violations of which would present either an imminent danger to  
23 the health, safety or welfare of any resident or a substantial  
24 probability that death or serious physical harm would result and

1 which is not immediately corrected, the department shall:

2 (1) Give immediate written notice of the noncompliance to  
3 the operator, administrator or person managing or supervising the  
4 conduct of the facility and a copy of such notice to the attorney  
5 general at the time the noncompliance is found;

6 (2) Make public the fact that a notice of noncompliance has  
7 been issued to the facility. Copies of the notice shall be sent  
8 to appropriate hospitals and social service agencies and members  
9 of the general assembly representing the facility;

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

16 198.030. Notwithstanding any other law to the contrary,  
17 every residential care facility I and residential care facility  
18 II shall meet or exceed the federal requirements relating to the  
19 posting of deficiencies for federally certified skilled nursing  
20 facilities and intermediate care facilities.

21 198.032. 1. Nothing contained in sections 198.003 to  
22 198.186 shall permit the public disclosure by the department of  
23 confidential medical, social, personal or financial records of  
24 any resident in any facility, except when disclosed in a manner

1 which does not identify any resident, or when ordered to do so by  
2 a court of competent jurisdiction. Such records shall be  
3 accessible without court order for examination and copying only  
4 to the following persons or offices, or to their designees:

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

7 (2) The attorney general;

8 (3) The department of mental health for residents placed  
9 to, from, or through that department;

10 (4) Any appropriate law enforcement agency;

11 (5) The resident, [his] the resident's guardian or  
12 conservator, or any other person designated by the resident; and

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

17 2. Inspection reports and written reports of investigations  
18 of complaints, of substantiated reports of abuse and neglect  
19 received in accordance with section 198.070, and complaints  
20 received by the department relating to the quality of care of  
21 facility residents, shall be accessible to the public for  
22 examination and copying, provided that such reports are disclosed  
23 in a manner which does not identify the complainant or any  
24 particular resident. Records and reports shall clearly show what

1 steps the department and the institution are taking to resolve  
2 problems indicated in said inspections, reports and complaints.  
3 Unsubstantiated inspection reports, and written reports of  
4 investigations of complaints shall not be used by insurance  
5 carriers for purposes of insurance underwriting.

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

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

19 198.036. 1. The department may revoke a license in any  
20 case in which it finds that the operator:

21 (1) Failed or refused to comply with class I or II  
22 standards, as established by the department pursuant to section  
23 198.085 or where the operator was cited for failure to comply  
24 with a particular class I standard on two different occasions

1 within a twenty-four month period; or failed or refused to comply  
2 with class III standards as established by the department  
3 pursuant to section 198.085, where the aggregate effect of such  
4 noncompliances presents either an imminent danger to the health,  
5 safety or welfare of any resident or a substantial probability  
6 that death or serious physical harm would result;

7 (2) Refused to allow representatives of the department to  
8 inspect the facility for compliance with standards;

9 (3) Knowingly acted or knowingly omitted any duty in a  
10 manner which would materially and adversely affect the health,  
11 safety, welfare or property of a resident; or

12 (4) Demonstrated financial incapacity to operate and  
13 conduct the facility in accordance with the provisions of  
14 sections 198.003 to 198.096.

15 2. Upon revocation of a license, the director of the  
16 department shall so notify the operator in writing, setting forth  
17 the reason and grounds for the revocation. Notice of such  
18 revocation shall be sent either by certified mail, return receipt  
19 requested, to the operator at the address of the facility, or  
20 served personally upon the operator. The department shall  
21 provide the operator notice of such revocation at least ten days  
22 prior to its effective date.

23 198.039. 1. Any person aggrieved by an official action of  
24 the department either refusing to issue a license or revoking a

1 license may seek a determination thereon by the administrative  
2 hearing commission pursuant to the provisions of section 621.045,  
3 RSMo, et seq., except that the petition must be filed with the  
4 administrative hearing commission within fifteen days after the  
5 mailing or delivery of notice to the operator. It shall not be a  
6 condition to such determination that the person aggrieved seek a  
7 reconsideration, a rehearing or exhaust any other procedure  
8 within the department.

9 2. The administrative hearing commission may stay the  
10 revocation of such license, pending the commission's findings and  
11 determination in the cause, upon such conditions, with or without  
12 the agreement of the parties, as the commission deems necessary  
13 and appropriate including the posting of bond or other security  
14 except that the commission shall not grant a stay or if a stay  
15 has already been entered shall set aside its stay, [if upon  
16 application of the department] unless the commission finds that  
17 the facility operator has established reason to believe that  
18 continued operation of a facility pending the commission's final  
19 determination would not present an imminent danger to the health,  
20 safety or welfare of any resident or a substantial probability  
21 that death or serious physical harm would result. In such cases,  
22 the burden of going forward with the evidence as well as the  
23 ultimate burden of persuasion is upon the facility. In any case  
24 in which the department has refused to issue a license, the

1 commission shall have no authority to stay or to require the  
2 issuance of a license pending final determination by the  
3 commission.

4 3. The administrative hearing commission shall make the  
5 final decision as to the issuance or revocation of a license  
6 based upon the circumstances and conditions as they existed at  
7 the time of the alleged deficiencies and not based upon  
8 circumstances and conditions after the time of the decision not  
9 to issue or revoke a license. Any person aggrieved by a final  
10 decision of the administrative hearing commission, including the  
11 department, may seek judicial review of such decision by filing a  
12 petition for review in the court of appeals for the district in  
13 which the facility is located. Review shall be had, except as  
14 modified herein, in accordance with the provisions of sections  
15 621.189 and 621.193, RSMo.

16 198.046. If a skilled nursing facility that has a private-  
17 pay certificate of need exemption has a private-pay resident who  
18 becomes eligible for Medicaid reimbursement after residing in the  
19 facility for a period in excess of one year, the facility may  
20 receive Medicaid reimbursement on behalf of such eligible  
21 individual without meeting the requirements of sections 197.300  
22 to 197.366, RSMo, for up to ten percent of the facility's  
23 licensed beds.

24 198.067. 1. An action may be brought by the department, or

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

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

20 3. The operator of any facility which has been cited with a  
21 violation of sections 198.003 to 198.096 or the regulations  
22 established pursuant thereto, or of subsection (b), (c), or (d)  
23 of Section 1396r of Title 42 of the United States Code or the  
24 regulations established pursuant thereto, is liable to the state

1 for civil penalties of up to ten thousand dollars for each day  
2 that the violations existed or continue to exist, regardless of  
3 whether they are later corrected. Violations shall be presumed  
4 to continue to exist from the time they are found until the time  
5 the [division of aging] department finds them to have been  
6 corrected. The amount of the penalty shall be determined as  
7 follows:

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

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

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

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

18 (5) For each specific class I violation by the same  
19 operator which has been cited previously within the past  
20 twenty-four months and for each specific class II or III  
21 violation by the same operator which has been cited previously  
22 within the past twelve months, double the amount last imposed.

23 As used in this [subdivision] subsection the term "violation"

1 shall mean a breach of a specific state or federal standard or  
2 statute which remains uncorrected and not in accord with the  
3 accepted plan of correction at the time of the reinspection  
4 conducted pursuant to subsection 3 of section 198.026 or the  
5 regulations established pursuant to Title 42 of the United States  
6 Code. A judgment rendered against the operator of a facility  
7 pursuant to this subsection shall bear interest as provided in  
8 subsection 1 of section 408.040, RSMo.

9 4. Any individual who willfully and knowingly certifies  
10 pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42  
11 of the United States Code a material and false statement in a  
12 resident assessment is subject to a civil penalty of not more  
13 than one thousand dollars with respect to each assessment. Any  
14 individual who willfully and knowingly causes another individual  
15 to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r  
16 of Title 42 of the United States Code a material and false  
17 statement in a resident assessment is subject to a civil penalty  
18 of not more than five thousand dollars with respect to each  
19 assessment.

20 5. The imposition of any remedy provided for in sections  
21 198.003 to 198.186 shall not bar the imposition of any other  
22 remedy.

23 6. Penalties collected pursuant to this section shall be  
24 deposited in the [division of aging] elderly home-delivered meals

1 trust fund as established in section 660.078, RSMo. Such  
2 penalties shall not be considered a charitable contribution for  
3 tax purposes.

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

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

15 9. The amount of any civil penalty assessed by the circuit  
16 court pursuant to this section [shall] may be reduced by the  
17 amount of any civil monetary penalty which the licensed operator  
18 of the facility may establish it has paid pursuant to the laws of  
19 the United States for the breach of the same federal standards  
20 and arising out of the same conduct for which the state action is  
21 brought.

22 10. In addition to the civil penalties specified in  
23 subdivision (1) of subsection 3 of this section, any facility  
24 which is cited with a violation of a class I standard pursuant to

1 subsection 1 of section 198.085, when such violation results in  
2 serious physical injury or abuse of a sexual nature pursuant to  
3 subdivision (1) of section 198.006, to any resident of that  
4 facility shall be liable to the state for a civil penalty of one  
5 hundred dollars multiplied by the number of beds licensed to the  
6 facility, up to a maximum of ten thousand dollars pursuant to  
7 subsections 1 and 2 of this section. The liability of the  
8 facility for civil penalties pursuant to this section shall be  
9 incurred immediately upon the citation of the violation and shall  
10 not be affected by any subsequent correction of the violation.  
11 For the purposes of this section, "serious physical injury" means  
12 physical injury that creates a substantial risk of death or that  
13 causes serious disfigurement or protracted loss or impairment of  
14 the function of any part of the body.

15 198.068. In accordance with the provisions of section  
16 198.067, the general assembly specifically intends for the civil  
17 penalties in section 198.067 to be imposed in cases where there  
18 has been more than one violation or a pattern of violations,  
19 regardless of any subsequent correction of the violation by a  
20 facility.

21 198.070. 1. When any physician, dentist, chiropractor,  
22 optometrist, podiatrist, [intern,] nurse, nurse practitioner,  
23 physician's assistant, medical examiner, social worker,  
24 psychologist, minister, Christian Science practitioner, peace

1 officer, pharmacist, physical therapist, facility administrator  
2 or owner, employee in a facility, or employee of the department  
3 of social services, the department of health and senior services,  
4 or of the department of mental health, coroner, [dentist,]  
5 hospital and clinic personnel engaged in examination, care or  
6 treatment of persons, other health practitioners, mental health  
7 professional, adult day care worker, probation or parole officer,  
8 law enforcement official or other person with the care of [a  
9 person sixty years of age or older or] an eligible adult as  
10 defined in section 660.250, RSMo, has reasonable cause to believe  
11 that a resident of a facility has been abused or neglected, he or  
12 she shall immediately report or cause a report to be made to the  
13 department.

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

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

23 4. In addition to those persons required to report pursuant  
24 to subsection 1 of this section, any other person having

1 reasonable cause to believe that a resident has been abused or  
2 neglected may report such information to the department.

3 5. Upon receipt of a report, the department shall initiate  
4 an investigation within twenty-four hours and, as soon as  
5 possible during the course of the investigation, shall notify the  
6 resident's next of kin or responsible party of the report and the  
7 investigation and further notify them whether the report was  
8 substantiated or unsubstantiated. As provided in section  
9 565.186, RSMo, substantiated reports of elder abuse shall be  
10 promptly reported by the department to the appropriate law  
11 enforcement agency and prosecutor.

12 6. If the investigation indicates possible abuse or neglect  
13 of a resident, the investigator shall refer the complaint  
14 together with the investigator's report to the department  
15 director or the director's designee for appropriate action. If,  
16 during the investigation or at its completion, the department has  
17 reasonable cause to believe that immediate removal is necessary  
18 to protect the resident from abuse or neglect, the department or  
19 the local prosecuting attorney may, or the attorney general upon  
20 request of the department shall, file a petition for temporary  
21 care and protection of the resident in a circuit court of  
22 competent jurisdiction. The circuit court in which the petition  
23 is filed shall have equitable jurisdiction to issue an ex parte  
24 order granting the department authority for the temporary care

1 and protection of the resident, for a period not to exceed thirty  
2 days.

3 7. Reports shall be confidential, as provided pursuant to  
4 section 660.320, RSMo.

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

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

17 10. No person who directs or exercises any authority in a  
18 facility shall evict, harass, dismiss or retaliate against a  
19 resident or employee because such resident or employee or any  
20 member of such resident's or employee's family has made a report  
21 of any violation or suspected violation of laws, ordinances or  
22 regulations applying to the facility which the resident, the  
23 resident's family or an employee has reasonable cause to believe  
24 has been committed or has occurred. Through the existing

1 division of aging information and referral telephone contact  
2 line, residents, their families and employees of a facility shall  
3 be able to obtain information about their rights, protections and  
4 options in cases of eviction, harassment, dismissal or  
5 retaliation due to a report being made pursuant to this section.

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

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

14 13. The timely self-reporting of incidents to the central  
15 registry by a facility shall continue to be investigated in  
16 accordance with department policy, and shall not be counted or  
17 reported by the department as a hot- line call but rather a  
18 self-reported incident. If the self-reported incident results in  
19 a regulatory violation, such incident shall be reported as a  
20 substantiated report.

21 198.073. 1. [Except as provided in subsection 3 of this  
22 section, a residential care facility II or residential care  
23 facility I shall admit or retain only those persons who are  
24 capable mentally and physically of negotiating a normal path to

1 safety using assistive devices or aids when necessary, and who  
2 may need assisted personal care within the limitations of such  
3 facilities, and who do not require hospitalization or skilled  
4 nursing care.] An individual may be accepted for residency in a  
5 residential care facility I or residential care facility II or  
6 remain in residence if the facility:

7 (1) Provides for or secures appropriate services to meet  
8 the scheduled and unscheduled needs of the resident; and

9 (2) Has twenty-four hour staff appropriate in numbers and  
10 with appropriate skills to provide such services and upkeep of  
11 the facility; and

12 (3) Has a written plan, approved by the local fire  
13 department, for the protection of all residents in the event of  
14 disasters. Such plan may include keeping residents in place,  
15 evacuating residents to areas of refuge, evacuating residents  
16 from the building when necessary, or other methods of protection  
17 based on the emergency and the individual building design; and

18 (4) Has written verification signed by the resident, or a  
19 family member or legal representative of the resident, the  
20 resident's physician, and the facility representative stating how  
21 the facility will meet the scheduled and unscheduled needs of the  
22 resident.

23 2. Notwithstanding the provisions of subsection 3 of this  
24 section, those persons previously qualified for residence who may

1 have a temporary period of incapacity due to illness, surgery, or  
2 injury, which period does not exceed forty-five days, may be  
3 allowed to remain in a residential care facility II or  
4 residential care facility I if approved by a physician.

5 3. A residential care facility II may admit or continue to  
6 care for [those persons who are physically capable of negotiating  
7 a normal path to safety using assistive devices or aids when  
8 necessary but are mentally incapable of negotiating such a path  
9 to safety that have been diagnosed with Alzheimer's disease or  
10 Alzheimer's related dementia] individuals with dementia who  
11 require assistance in order to evacuate in the event of a  
12 disaster, if the following requirements are met:

13 (1) [A family member or legal representative of the  
14 resident, in consultation with the resident's primary physician  
15 and the facility, determines that the facility can meet the needs  
16 of the resident. The facility shall document the decision  
17 regarding continued placement in the facility through written  
18 verification by the family member, physician and the facility  
19 representative;

20 (2)] The facility is equipped with an automatic sprinkler  
21 system, in compliance with National Fire Protection Association  
22 Code 13 or National Fire Protection Association Code 13R, and an  
23 automated fire door system and smoke alarms in compliance with  
24 13-3.4 of the [1997] 2000 Life Safety Codes for Existing Health

1 Care Occupancy;

2 [(3) In a multilevel facility, residents who are mentally  
3 incapable of negotiating a pathway to safety are housed only on  
4 the ground floor;

5 (4)] (2) The facility shall take necessary measures to  
6 provide residents with the opportunity to explore the facility  
7 and, if appropriate, its grounds;

8 [(5) The facility shall be staffed twenty-four hours a day  
9 by the appropriate number and type of personnel necessary for the  
10 proper care of residents and upkeep of the facility.];

11 (3) In meeting [such] staffing requirements, every resident  
12 [who is mentally incapable of negotiating a pathway to safety]  
13 with dementia who requires assistance in order to evacuate in the  
14 event of a disaster shall count as three residents. All on-duty  
15 staff of the facility shall, at all times, be awake, dressed and  
16 prepared to assist residents in case of emergency;

17 [(6)] (4) Every resident [mentally incapable of negotiating  
18 a pathway to safety in the facility] with dementia who requires  
19 assistance in order to evacuate in the event of disaster shall be  
20 assessed by a licensed professional, as defined in sections  
21 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337,  
22 RSMo, with an assessment [instrument utilized by the division of  
23 aging known as the minimum data set used for assessing residents  
24 of skilled nursing facilities] tool for community-based services

1 for persons with dementia determined by the department:

2 (a) Upon admission;

3 (b) At least semiannually; and

4 (c) When a significant change has occurred in the  
5 resident's condition which may require additional services;

6 [(7)] (5) Based on the assessment in subdivision [(6)] (4)  
7 of this subsection, a licensed professional, as defined in  
8 sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter  
9 337, RSMo, shall develop an individualized service plan for every  
10 resident [who is mentally incapable of negotiating a pathway to  
11 safety] with dementia who requires assistance in order to  
12 evacuate in the event of a disaster. Such service plan must  
13 include an evacuation plan for the resident. The service plan  
14 shall be reviewed annually with the resident, the resident's  
15 legal representative or the resident's family. Such  
16 individualized service plan shall be implemented by the  
17 facility's staff to meet the specific needs of the resident;

18 [(8)] (6) Every facility shall use a personal electronic  
19 monitoring device for any resident whose physician recommends the  
20 use of such device;

21 [(9) All facility personnel who will provide direct care to  
22 residents who are mentally incapable of negotiating a pathway to  
23 safety shall receive at least twenty-four hours of training  
24 within the first thirty days of employment. At least twelve

1 hours of such training shall be classroom instruction, with six  
2 classroom instruction hours and two on-the-job training hours  
3 related to the special needs, care and safety of residents with  
4 dementia;

5 (10) All personnel of the facility, regardless of whether  
6 such personnel provides direct care to residents who cannot  
7 negotiate a pathway to safety, shall receive on a quarterly basis  
8 at least four hours of in- service training, with at least two  
9 such hours relating to the care and safety of residents who are  
10 mentally incapable of negotiating a pathway to safety;

11 (11)] (7) The facility shall comply with the training  
12 requirements pursuant to subdivisions (1) and (2) of subsection 8  
13 of section 660.050, RSMo;

14 (8) Every facility shall make available and implement  
15 self-care, productive and leisure activity programs for persons  
16 with dementia which maximize and encourage the resident's optimal  
17 functional ability;

18 [(12)] (9) Every facility shall develop and implement a  
19 plan to protect the rights, privacy and safety of all residents  
20 and to prevent the financial exploitation of all residents. [; and

21 (13) A licensee of any licensed residential care facility  
22 or any residential care facility shall ensure that its facility  
23 does not accept or retain a resident who is mentally incapable of  
24 negotiating a normal pathway to safety using assistive devices

1 and aids that:

2 (a) Has exhibited behaviors which indicate such resident is  
3 a danger to self or others;

4 (b) Is at constant risk of elopement;

5 (c) Requires physical restraint;

6 (d) Requires chemical restraint. As used in this  
7 subdivision, the following terms mean:

8 a. "Chemical restraint", a psychopharmacologic drug that is  
9 used for discipline or convenience and not required to treat  
10 medical symptoms;

11 b. "Convenience", any action taken by the facility to  
12 control resident behavior or maintain residents with a lesser  
13 amount of effort by the facility and not in the resident's best  
14 interests;

15 c. "Discipline", any action taken by the facility for the  
16 purpose of punishing or penalizing residents;

17 (e) Requires skilled nursing services as defined in  
18 subdivision (17) of section 198.003 for which the facility is not  
19 licensed or able to provide;

20 (f) Requires more than one person to simultaneously  
21 physically assist the resident with any activity of daily living,  
22 with the exception of bathing;

23 (g) Is bed-bound or chair-bound due to a debilitating or  
24 chronic condition.

1           4. The facility shall not care for any person unless such  
2 facility is able to provide appropriate services for and meet the  
3 needs of such person.

4           5.] 4. Nothing in this chapter shall prevent a facility  
5 from discharging a resident who is a danger to himself or  
6 herself, or to others.

7           [6. The training requirements established in subdivisions  
8 (9) and (10) of subsection 3 of this section shall fully satisfy  
9 the training requirements for the program described in  
10 subdivision (18) of subsection 1 of section 208.152, RSMo.

11           7. The division of aging] 5. The department shall  
12 promulgate rules to ensure compliance with this section and to  
13 sanction facilities that fail to comply with this section. Any  
14 rule or portion of a rule, as that term is defined in section  
15 536.010, RSMo, that is created under the authority delegated in  
16 this section shall become effective only if it complies with and  
17 is subject to all of the provisions of chapter 536, RSMo, and, if  
18 applicable, section 536.028, RSMo. This section and chapter 536,  
19 RSMo, are nonseverable and if any of the powers vested with the  
20 general assembly pursuant to chapter 536, RSMo, to review, to  
21 delay the effective date or to disapprove and annul a rule are  
22 subsequently held unconstitutional, then the grant of rulemaking  
23 authority and any rule proposed or adopted after August 28, 1999,  
24 shall be invalid and void.

1           6. As used in this section, the term "dementia" means a  
2 general term for the loss of thinking, remembering, and reasoning  
3 so severe that it interferes with an individual's daily  
4 functioning. Symptoms may also include changes in personality,  
5 mood, and behavior. Dementia is irreversible when caused by  
6 disease or injury but may be reversible when related to  
7 depression, drug interaction, thyroid, vitamin, or nutrition  
8 imbalances.

9           198.074. 1. Long term care facilities, adult day care  
10 facilities, residential care facilities I and residential care  
11 facilities II shall make immunizations for influenza and  
12 pneumonia available to residents sixty-five years of age or  
13 older, on-site on a yearly basis or upon admission. Written  
14 consent for such immunizations shall be given by the resident and  
15 his or her physician. The department shall prescribe by rule,  
16 the manner by which such facilities shall document compliance  
17 with this section, including documenting residents who refuse to  
18 be immunized. The department shall not impose a violation on a  
19 licensee for not making an immunization available if there is a  
20 shortage of that immunization in this state as determined by the  
21 director of the department of health and senior services.

22           2. Any rule or portion of a rule, as that term is defined  
23 in section 536.010, RSMo, that is created under the authority  
24 delegated in this section shall become effective only if it

1 complies with and is subject to all of the provisions of chapter  
2 536, RSMo, and, if applicable, section 536.028, RSMo. This  
3 section and chapter 536, RSMo, are nonseverable and if any of the  
4 powers vested with the general assembly pursuant to chapter 536,  
5 RSMo, to review, to delay the effective date or to disapprove and  
6 annul a rule are subsequently held unconstitutional, then the  
7 grant of rulemaking authority and any rule proposed or adopted  
8 after August 28, 2002, shall be invalid and void.

9 198.080. [The division of aging shall develop flexible  
10 assessment procedures for individuals in long-term care and those  
11 considering long- term care services which follow the individual  
12 through the continuum of care, including periodic reassessment.  
13 By January 1, 2002, the division of aging shall promulgate rules  
14 and regulations to implement the new assessment system and shall  
15 make a report to the appropriate house and senate committees of  
16 the general assembly regarding the new assessment system. Any  
17 rule or portion of a rule, as that term is defined in section  
18 536.010, RSMo, that is created under the authority delegated in  
19 this section shall become effective only if it complies with and  
20 is subject to all of the provisions of chapter 536, RSMo, and, if  
21 applicable, section 536.028, RSMo. This section and chapter 536,  
22 RSMo, are nonseverable and if any of the powers vested with the  
23 general assembly pursuant to chapter 536, RSMo, to review, to  
24 delay the effective date or to disapprove and annul a rule are

1 subsequently held unconstitutional, then the grant of rulemaking  
2 authority and any rule proposed or adopted after August 28, 1999,  
3 shall be invalid and void.] The departments of health and senior  
4 services, social services, mental health, and elementary and  
5 secondary education shall work together to compare and evaluate  
6 their assessment procedures for individuals receiving long-term  
7 care services and those individuals considering long-term care  
8 services. Assessment procedures that are used for eligibility,  
9 care needs determination, placement, and funding of care shall be  
10 compared and evaluated. Following such evaluation, the  
11 departments shall work together to make changes in the  
12 assessments procedures utilized by each department to provide  
13 uniformity and equity of services so the care needs of  
14 individuals are met regardless of the program or department  
15 providing services and funding. The assessment of individuals  
16 with long-term care needs shall include, but is not limited to,  
17 the following:

18 (1) A comprehensive assessment of the individual's care  
19 needs and whether such needs are met or unmet; and

20 (2) An assessment of the individual's cognitive ability and  
21 the supports they would need to perform activities of daily  
22 living on a day-to-day basis; and

23 (3) An evaluation of the individual's support system in the  
24 community that could enable the individual to live in a community

1 setting instead of an institution if the individual desires to be  
2 in a community setting; and

3 (4) Periodic reassessment of the individual's health, care  
4 needs, and support system.

5 198.082. 1. Each nursing assistant hired to work in a  
6 skilled nursing or intermediate care facility after January 1,  
7 1980, shall have successfully completed a nursing assistant  
8 training program approved by the department [or shall enroll in  
9 and begin the first available approved training program which is  
10 scheduled to commence within ninety days of the date of the  
11 nursing assistant's employment] which shall be completed within  
12 one hundred twenty days of employment. Training programs shall  
13 be offered at a location most reasonably accessible to the  
14 enrollees in each class. The program may be established and  
15 carried out by the skilled nursing or intermediate care facility  
16 so long as that facility has not been cited for any class I  
17 violation within the past twenty-four months, by a professional  
18 organization, or by the department, and training shall be given  
19 by the personnel of the facility, by a professional organization,  
20 by the department, by any junior college or by the vocational  
21 education department of any high school. No program shall offer  
22 or provide training pursuant to this section unless the  
23 department has approved the program prior to the offering or  
24 provision of such training.

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

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

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

24           (2) Continuing in-service training to assure continuing

1 competency in existing and new nursing skills. [All nursing  
2 assistants trained prior to January 1, 1989, shall attend, by  
3 August 31, 1989, an entire special retraining program established  
4 by rule or regulation of the department which shall contain  
5 information on methods of handling mentally confused residents  
6 and which may be offered on premises by the employing facility.]

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

14 198.085. In establishing standards for each type of  
15 facility, the department shall classify the standards into three  
16 categories for each type of licensed facility as follows:

17 (1) Class I standards are standards the violation of which  
18 would present either an imminent danger to the health, safety or  
19 welfare of any resident or a substantial probability that death  
20 or serious physical harm would result. Class I standards shall  
21 be divided into the following violation categories:

22 (a) Class I death violations which are violations of class  
23 I standards that have resulted in the death of a resident;

24 (b) Class I harm violations which are violations of class I

1 standards that have resulted in serious physical harm to a  
2 resident; and

3 (c) Class I risk violations which are violations of class I  
4 standards that present an imminent danger to the health, safety,  
5 or welfare of a resident or a substantial probability that death  
6 or serious physical harm would result;

7 (2) Class II standards are standards which have a direct or  
8 immediate relationship to the health, safety or welfare of any  
9 resident, but which do not create imminent danger;

10 (3) Class III standards are standards which have an  
11 indirect or a potential impact on the health, safety or welfare  
12 of any resident.

13 198.088. 1. Every facility, in accordance with the rules  
14 applying to each particular type of facility, shall ensure that:

15 (1) There are written policies and procedures available to  
16 staff, residents, their families or legal representative and the  
17 public which govern all areas of service provided by the  
18 facility. The facility shall also retain and make available for  
19 public inspection at the facility to staff, residents, their  
20 families or legal representative and the public a complete copy  
21 of each official notification from the department of violations,  
22 deficiencies, licensure approvals, disapprovals, and responses, a  
23 description of services, basic rate and charges for any services  
24 not covered by the basic rate, if any, and a list of names,

1 addresses and occupation of all individuals who have a  
2 proprietary interest in the facility;

3 (2) Policies relating to admission, transfer, and discharge  
4 of residents shall assure that:

5 (a) Only those persons are accepted whose needs can be met  
6 by the facility directly or in cooperation with community  
7 resources or other providers of care with which it is affiliated  
8 or has contracts;

9 (b) As changes occur in their physical or mental condition,  
10 necessitating service or care which cannot be adequately provided  
11 by the facility, residents are transferred promptly to hospitals,  
12 skilled nursing facilities, or other appropriate facilities; and

13 (c) Except in the case of an emergency, the resident, [his]  
14 the resident's next of kin, attending physician, and the  
15 responsible agency, if any, are consulted at least thirty days in  
16 advance of the transfer or discharge of any resident, and  
17 casework services or other means are utilized to assure that  
18 adequate arrangements exist for meeting [his] the resident's  
19 needs through other resources;

20 (3) Policies define the uses of chemical and physical  
21 restraints, identify the professional personnel who may authorize  
22 the application of restraints in emergencies and describe the  
23 mechanism for monitoring and controlling their use;

24 (4) Policies define procedures for submittal of complaints

1 and recommendations by residents and for assuring response and  
2 disposition;

3 (5) There are written policies governing access to,  
4 duplication of, and dissemination of information from the  
5 resident's records;

6 (6) Each resident admitted to the facility:

7 (a) Is fully informed of his or her rights and  
8 responsibilities as a resident. Prior to or at the time of  
9 admission, a list of resident rights shall be provided to each  
10 resident, or [his] the resident's designee, next of kin, or legal  
11 guardian. A list of resident rights shall be posted in a  
12 conspicuous location in the facility and copies shall be  
13 available to anyone upon request;

14 (b) Is fully informed in writing, prior to or at the time  
15 of admission and during stay, of services available in the  
16 facility, and of related charges including any charges for  
17 services not covered under the federal or state programs or not  
18 covered by the facility's basic per diem rate;

19 (c) Is fully informed by a physician of his or her health  
20 and medical condition unless medically contraindicated, as  
21 documented by a physician in his or her resident record, and is  
22 afforded the opportunity to participate in the planning of [his]  
23 the resident's total care and medical treatment and to refuse  
24 treatment, and participates in experimental research only upon

1 [his] the resident's informed written consent;

2 (d) Is transferred or discharged only for medical reasons  
3 or for [his] the resident's welfare or that of other residents,  
4 or for nonpayment for [his] the resident's stay. No resident may  
5 be discharged without notice of his or her right to a hearing and  
6 an opportunity to be heard on the issue of whether [his] the  
7 resident's immediate discharge is necessary. Such notice shall  
8 be given in writing no less than thirty days in advance of the  
9 discharge except in the case of an emergency discharge. In  
10 emergency discharges a written notice of discharge and right to a  
11 hearing shall be given as soon as practicable and an expedited  
12 hearing shall be held upon request of the resident, next of kin,  
13 legal guardian, or nursing facility;

14 (e) Is encouraged and assisted, throughout [his] the  
15 resident's period of stay, to exercise his or her rights as a  
16 resident and as a citizen, and to this end may voice grievances  
17 and recommend changes in policies and services to facility staff  
18 or to outside representatives of [his] the resident's choice,  
19 free from restraint, interference, coercion, discrimination, or  
20 reprisal;

21 (f) May manage [his] the resident's personal financial  
22 affairs, and, to the extent that the facility assists in such  
23 management, has [his] the resident's personal financial affairs  
24 managed in accordance with section 198.090;

1 (g) Is free from mental and physical abuse and neglect, and  
2 free from chemical and physical restraints except as follows:

3 a. When used as a part of a total program of care to assist  
4 the resident to attain or maintain the highest practicable level  
5 of physical, mental or psychosocial well-being;

6 b. When authorized in writing by a physician for a  
7 specified period of time; and

8 c. When necessary in an emergency to protect the resident  
9 from injury to himself or herself, or to others, in which case  
10 restraints may be authorized by designated professional personnel  
11 who promptly report the action taken to the physician.

12 When restraints are indicated, devices that are least  
13 restrictive, consistent with the resident's total treatment  
14 program, shall be used;

15 (h) Is ensured confidential treatment of all information  
16 contained in [his] the resident's records, including information  
17 contained in an automatic data bank, and [his] the resident's  
18 written consent shall be required for the release of information  
19 to persons not otherwise authorized under law to receive it;

20 (i) Is treated with consideration, respect, and full  
21 recognition of [his] the resident's dignity and individuality,  
22 including privacy in treatment and in care for [his] the  
23 resident's personal needs;

1 (j) Is not required to perform services for the facility;

2 (k) May communicate, associate and meet privately with  
3 persons of [his] the resident's choice, unless to do so would  
4 infringe upon the rights of other residents, and send and receive  
5 his or her personal mail unopened;

6 (l) May participate in activities of social, religious and  
7 community groups at [his] the resident's discretion, unless  
8 contraindicated for reasons documented by a physician in the  
9 resident's medical record;

10 (m) May retain and use [his] the resident's personal  
11 clothing and possessions as space permits;

12 (n) If married, is ensured privacy for visits by his or her  
13 spouse; if both are residents in the facility, they are permitted  
14 to share a room; and

15 (o) Is allowed the option of purchasing or renting goods or  
16 services not included in the per diem or monthly rate from a  
17 supplier of [his] the resident's own choice;

18 (7) The resident or [his] the resident's designee, next of  
19 kin or legal guardian receives an itemized bill for all goods and  
20 services actually rendered;

21 (8) A written account, available to residents and their  
22 families, is maintained on a current basis for each resident with  
23 written receipts for all personal possessions and funds received  
24 by or deposited with the facility and for all disbursements made

1 to or on behalf of the resident.

2 2. Each facility and the department shall encourage and  
3 assist residents in the free exercise of the resident's rights to  
4 civil and religious liberties, including knowledge of available  
5 choices and the right to independent personal decision. Each  
6 resident shall be given a copy of a statement of [his] the  
7 resident's rights and responsibilities, including a copy of the  
8 facility's rules and regulations. Each facility shall prepare a  
9 written plan to ensure the respect of each resident's rights and  
10 privacy and shall provide appropriate staff training to implement  
11 the plan.

12 3. (1) Each facility shall establish written procedures  
13 approved by the department by which complaints and grievances of  
14 residents may be heard and considered. The procedures shall  
15 provide for referral to the department of any complaints or  
16 grievances not resolved by the facility's grievance procedure.

17 (2) Each facility shall designate one staff member,  
18 employed full time, referred to in this subsection as the  
19 "designee", to receive all grievances when they are first made.

20 (3) If anyone wishes to complain about treatment,  
21 conditions, or violations of rights, [he] such person shall write  
22 or cause to be written his or her grievance or shall state it  
23 orally to the designee no later than fourteen days after the  
24 occurrence giving rise to the grievance. When the department

1 receives a complaint that does not contain allegations of abuse  
2 or neglect or allegations which would, if substantiated,  
3 constitute violation of a class I or class II standard as defined  
4 in section 198.085, and the complainant indicates that the  
5 complaint was not filed with the facility prior to the reporting  
6 of it to the department, the department may in such instances  
7 refer the complaint to the staff person who is designated by the  
8 facility to receive all grievances when they are first made. In  
9 such instances the department shall assure appropriate response  
10 from the facility, assure resolution at a subsequent on-site  
11 visit and provide a report to the complainant. The designee  
12 shall confer with persons involved in the occurrence and with any  
13 other witnesses and, no later than three days after the  
14 grievance, give a written explanation of findings and proposed  
15 remedies, if any, to the complainant and to the aggrieved party,  
16 if someone other than the complainant. Where appropriate because  
17 of the mental or physical condition of the complainant or the  
18 aggrieved party, the written explanation shall be accompanied by  
19 an oral explanation.

20 (4) The department shall establish and implement procedures  
21 for the making and transmission of complaints to the department  
22 by any person alleging violation of the provisions of sections  
23 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the  
24 standards established thereunder. The department shall promptly

1 review each complaint. In the case of a refusal to investigate,  
2 the department shall promptly notify the complainant of its  
3 refusal and the reasons therefor; and in every other case, the  
4 department shall, following investigation, notify the complainant  
5 of its investigation and any proposed action.

6 4. Whenever the department finds upon investigation that  
7 there have been violations of the provisions of sections 198.003  
8 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards  
9 established thereunder by any person licensed under the  
10 provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or  
11 344, RSMo, the department shall forward a report of its findings  
12 to the appropriate licensing or examining board for further  
13 investigation.

14 5. Each facility shall maintain a complete record of  
15 complaints and grievances made against such facility and a record  
16 of the final disposition of the complaints and grievances. Such  
17 record shall be open to inspection by representatives of the  
18 department during normal business hours.

19 6. Nothing in this section shall be construed as requiring  
20 a resident to exhaust grievance procedures established by the  
21 facility or by the department prior to filing a complaint  
22 pursuant to section 198.090.

23 198.093. 1. Any resident or former resident who is  
24 deprived of any right created by sections 198.088 and 198.090, or

1 the estate of a former resident so deprived, may file a written  
2 complaint within [one hundred eighty days] two years of the  
3 alleged deprivation or injury with the office of the attorney  
4 general describing the facts surrounding the alleged deprivation.  
5 A copy of the complaint shall be sent to the department by the  
6 attorney general.

7 2. The attorney general shall review each complaint and may  
8 initiate legal action as provided under sections 198.003 to  
9 198.186.

10 3. If the attorney general fails to initiate a legal action  
11 within sixty days of receipt of the complaint, the complainant  
12 may, within two hundred forty days of filing the complaint with  
13 the attorney general, bring a civil action in an appropriate  
14 court against any owner, operator or the agent of any owner or  
15 operator to recover actual damages. The court may, in its  
16 discretion, award punitive damages which shall be limited to the  
17 larger of five hundred dollars or five times the amount of  
18 special damages, unless the deprivation complained of is the  
19 result of an intentional act or omission causing physical or  
20 emotional injury to the resident, and may award to the prevailing  
21 party attorney's fees based on the amount of time reasonably  
22 expended, and may provide such equitable relief as it deems  
23 necessary and proper; except that, an attorney who is paid in  
24 whole or part from public funds for his or her representation in

1 any cause arising under this section shall not be awarded any  
2 attorney fees.

3 4. No owner or operator who pleads and proves as an  
4 affirmative defense that he or she exercised all care reasonably  
5 necessary to prevent the deprivation and injury for which  
6 liability is asserted shall be liable under this section.

7 5. Persons bringing suit to recover against a bond for  
8 personal funds pursuant to section 198.096 shall not be required  
9 to first file a complaint with the attorney general pursuant to  
10 subsection 1 of this section, nor shall subsection 1 be construed  
11 to limit in any way the right to recover on such bond.

12 6. Nothing contained in sections 198.003 to 198.186 shall  
13 be construed as abrogating, abridging or otherwise limiting the  
14 right of any person to bring appropriate legal actions in any  
15 court of competent jurisdiction to insure or enforce any legal  
16 right or to seek damages, nor shall any provision of the  
17 above-named sections be construed as preventing or discouraging  
18 any person from filing a complaint with the department or  
19 notifying the department of any alleged deficiency or  
20 noncompliance on the part of any facility.

21 198.094. All facilities licensed pursuant to this chapter  
22 that receive Medicaid funding for residents pursuant to chapter  
23 208, RSMo, shall submit an annual financial statement by October  
24 fifteenth of each year on a form developed by the department of

1 health and senior services. The completed forms shall be  
2 compiled by the department and submitted as a detailed report to  
3 the members of the general assembly and the governor no later  
4 than January fifteenth of each year. The form shall include but  
5 is not limited to a request for the following information:

6 (1) The range in salary of employees by job title,  
7 including administrator for the previous fiscal year;

8 (2) Dividends paid to any shareholder, itemized by  
9 shareholder;

10 (3) Any other remuneration paid to other persons in the  
11 form of distribution of profit or consulting fees;

12 (4) Payments to any entity as operator fees;

13 (5) Ownership by any shareholder, partner, or employee in  
14 any entity which does business with any facility licensed  
15 pursuant to this chapter. Such form shall include the date in  
16 which such ownership was acquired and the percentage of  
17 ownership; and

18 (6) If a facility is owned by a publicly traded entity, a  
19 copy of its Form 8-K filed with the United States Securities and  
20 Exchange Commission.

21 198.115. 1. A receiver may not be required to honor any  
22 lease, mortgage, secured transaction or other wholly or partially  
23 executory contract entered into by the facility's operator or  
24 administrator while acting in that capacity, if the agreement is

1 unconscionable. Factors which shall be considered in determining  
2 the unconscionability include, but are not limited to, the  
3 following:

4 (1) The person seeking payment under the agreement was an  
5 affiliate of the operator or owner at the time the agreement was  
6 made;

7 (2) The rental, price, or rate of interest required to be  
8 paid under the agreement was substantially in excess of a  
9 reasonable rental, price or rate of interest at the time the  
10 agreement was entered into.

11 2. If the receiver is in possession of real estate or goods  
12 subject to a lease, mortgage or security interest which the  
13 receiver is permitted to avoid under subsection 1 of this  
14 section, and if the real estate or goods are necessary for the  
15 continued operation of the facility, the receiver may apply to  
16 the court to set a reasonable rental, price or rate of interest  
17 to be paid by the receiver during the duration of the  
18 receivership. The court shall hold a hearing on the application  
19 within fifteen days. The receiver shall send notice of the  
20 application to any known owners of the property involved at least  
21 ten working days prior to the hearing. Payment by the receiver  
22 of the amount determined by the court to be reasonable is a  
23 defense to any action against the receiver for payment or for  
24 possession of the goods or real estate subject to the lease or

1 mortgage involved by any person who received such notice, but the  
2 payment does not relieve the owner or operator of the facility of  
3 any liability for the difference between the amount paid by the  
4 receiver and the amount due under the original lease or mortgage  
5 involved.

6 3. Notwithstanding the provisions of subdivision (10) of  
7 section 198.112, this section, or sections 400.9-101 to 400-  
8 9.508, RSMo, a receiver appointed in an action brought pursuant  
9 to section 198.099 may, upon application to and approval from the  
10 circuit court, use the revenues of the facility, including those  
11 which would otherwise be subject to a security interest, in any  
12 way approved by the circuit court if the circuit court finds that  
13 the lives, health, safety, or welfare of the residents of the  
14 facility so require.

15 198.345. Nothing in sections 198.200 to 198.350 shall  
16 prohibit a nursing home district from establishing and  
17 maintaining senior housing within its corporate limits.

18 198.525. Except as otherwise provided for in section  
19 198.526, in order to comply with sections 198.012 and 198.022,  
20 the department of health and senior services shall inspect  
21 residential care facilities II, intermediate care facilities and  
22 skilled nursing facilities attached to acute care hospitals at  
23 least twice a year.

24 198.526. 1. Except as provided for in subsection 3 of this

1 section, the [division of aging] department of health and senior  
2 services shall inspect all facilities licensed by the [division]  
3 department at least twice each year. Such inspections shall be  
4 conducted:

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

6 (2) At times of the day, on dates and at intervals which do  
7 not permit facilities to anticipate such inspections.

8 2. The [division] department shall annually reevaluate the  
9 inspection process to ensure the requirements [of subsection 1]  
10 of this section are met.

11 3. The department may reduce the frequency of inspections  
12 to once a year if:

13 (1) The facility has no class I deficiencies or class II  
14 violations related to the direct care of residents during an  
15 original inspection. A finding of substantial compliance after  
16 one or more revisits to an original inspection does not satisfy  
17 the requirements of this subdivision;

18 (2) In the year subsequent to a finding of no class I  
19 deficiencies or class II violations related to the direct care of  
20 residents pursuant to subdivision (1) of this subsection, the  
21 facility has no substantiated complaints involving class I  
22 deficiencies or class II violations related to the direct care of  
23 residents; and

24 (3) In the year subsequent to a finding of no class I

1 deficiencies or class II violations related to the direct care of  
2 residents pursuant to subdivision (1) of this subsection, the  
3 facility does not have a change in ownership, operator, or  
4 director of nursing.

5 4. Notwithstanding any other provision of law to the  
6 contrary, the department may inspect any facility at any time.  
7 The department may, but is not required, to conduct an inspection  
8 in connection with the investigation of any complaint filed  
9 against any facility. Federal laws and rules governing surveys  
10 of facilities are not affected by the provisions of this or any  
11 other provision of state law.

12 198.531. 1. The [division of aging] department of health  
13 and senior services, in collaboration with qualified Missouri  
14 schools and universities, shall establish an aging-in-place pilot  
15 program at a maximum of four selected sites throughout the state  
16 which will provide a continuum of care for elders who need  
17 long-term care. For purposes of this section, "qualified  
18 Missouri schools and universities" means any Missouri school or  
19 university which has a school of nursing, a graduate nursing  
20 program, or any other similar program or specialized expertise in  
21 the areas of aging, long-term care or health services for the  
22 elderly.

23 2. The pilot program shall:

24 (1) Deliver a full range of physical and mental health

1 services to residents in the least restrictive environment of  
2 choice to reduce the necessity of relocating such residents to  
3 other locations as their health care needs change;

4 (2) Base licensure on services provided rather than on  
5 facility type; and

6 (3) Be established in selected urban, rural and regional  
7 sites throughout the state.

8 3. The directors of the [division of aging and division of  
9 medical services] departments of health and senior services and  
10 social services, or their designees, shall apply for all federal  
11 waivers necessary to provide Medicaid reimbursement for health  
12 care services received through the aging-in-place pilot program.

13 4. The [division of aging] department of health and senior  
14 services shall monitor the pilot program and report to the  
15 general assembly, not later than January 1, 2008, on the  
16 effectiveness of such program, including quality of care,  
17 resident satisfaction, and cost-effectiveness [to include] and  
18 the cost equivalent of unpaid or volunteer labor. Pilot program  
19 success and effectiveness shall be used to establish a new  
20 licensure category for the provision of aging-in-place services.  
21 The department of health and senior services may, for the purpose  
22 of implementing and evaluating the effectiveness of the pilot  
23 program, grant exceptions to sections 198.003 to 198.186, during  
24 the pilot program period if the department has determined that

1 the exception would not potentially jeopardize the health,  
2 safety, or welfare of any resident of the aging-in-place pilot  
3 program.

4 5. Developments authorized by this section shall be exempt  
5 from the provisions of sections 197.300 to 197.367, RSMo[, and  
6 shall be licensed by the division of aging].

7 6. Developments authorized by this section shall, for the  
8 duration of the pilot program and continuing thereafter upon the  
9 expiration or termination of or withdrawal from the program, be  
10 exempt from the provisions of sections 197.300 to 197.366, RSMo,  
11 and may continue to be licensed by the department of health and  
12 senior services provided such developments continue to meet the  
13 standards of licensure established by the department.

14 354.407. Notwithstanding the provisions of section 354.405  
15 to the contrary, a program for all-inclusive care for the elderly  
16 (PACE) project sponsored by a religious or charitable  
17 organization that is itself or is controlled by an entity  
18 organized under Section 501(c)(3) of the Internal Revenue Code  
19 and which has had its application for the operation of a PACE  
20 program approved by the Center for Medicare and Medicaid Services  
21 of the federal Department of Health and Human Services and is  
22 operating under such approval shall not be deemed to be engaged  
23 in any business required to be licensed pursuant to section  
24 354.405. Such exemption shall apply only to business conducted

1 pursuant to the approved PACE contract and not to any other  
2 business that such organization may conduct.

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

11 565.188. 1. When any physician, medical examiner, coroner,  
12 dentist, chiropractor, optometrist, podiatrist, [resident  
13 intern,] nurse, nurse practitioner, physician's  
14 assistant, hospital and clinic personnel engaged in examination,  
15 care or treatment of persons, or other health practitioners,  
16 psychologists, mental health professional, pharmacist, physical  
17 therapist, social worker, adult day care center worker, nursing  
18 home worker, or any owner or employee of a facility licensed  
19 pursuant to chapter 198, RSMo, probation or parole officer,  
20 minister, Christian Science practitioner, peace officer or law  
21 enforcement official, in-home services owner, operator, or  
22 employee, employee of the departments of health and senior  
23 services, social services, or mental health, or other person with  
24 responsibility for the care of a person sixty years of age or

1       older who is unable to protect his or her own interests or is  
2       unable to meet his or her essential human needs has reasonable  
3       cause to suspect that such a person has been subjected to abuse  
4       or neglect or observes such a person being subjected to  
5       conditions or circumstances which would reasonably result in  
6       abuse or neglect, he shall immediately report or cause a report  
7       to be made to the department in accordance with the provisions of  
8       sections 660.250 to 660.295, RSMo. Any other person who becomes  
9       aware of circumstances which may reasonably be expected to be the  
10      result of or result in abuse or neglect may report to the  
11      department.

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

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

17             4. Every person who has been previously convicted of or  
18      pled guilty to making a false report to the department and who is  
19      subsequently convicted of making a false report under subsection  
20      3 of this section is guilty of a class D felony.

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

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

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

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

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

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

20           630.140. 1. Information and records compiled, obtained,  
21 prepared or maintained by the residential facility, day program  
22 operated, funded or licensed by the department or otherwise,  
23 specialized service, or by any mental health facility or mental  
24 health program in which people may be civilly detained pursuant

1 to chapter 632, RSMo, in the course of providing services to  
2 either voluntary or involuntary patients, residents or clients  
3 shall be confidential.

4 2. The facilities or programs shall disclose information  
5 and records including medication given, dosage levels, and  
6 individual ordering such medication to the following upon their  
7 request:

8 (1) The parent of a minor patient, resident or client;

9 (2) The guardian or other person having legal custody of  
10 the patient, resident or client;

11 (3) The attorney of a patient, resident or client who is a  
12 ward of the juvenile court, an alleged incompetent, an  
13 incompetent ward or a person detained under chapter 632, RSMo, as  
14 evidenced by court orders of the attorney's appointment;

15 (4) An attorney or personal physician as authorized by the  
16 patient, resident or client;

17 (5) Law enforcement officers and agencies, information  
18 about patients, residents or clients committed pursuant to  
19 chapter 552, RSMo, but only to the extent necessary to carry out  
20 the responsibilities of their office, and all such law  
21 enforcement officers shall be obligated to keep such information  
22 confidential;

23 (6) The entity or agency authorized to implement a system  
24 to protect and advocate the rights of persons with developmental

1 disabilities under the provisions of 42 U.S.C. 6042. The entity  
2 or agency shall be able to obtain access to the records of a  
3 person with developmental disabilities who is a client of the  
4 entity or agency if such person has authorized the entity or  
5 agency to have such access; and the records of any person with  
6 developmental disabilities who, by reason of mental or physical  
7 condition is unable to authorize the entity or agency to have  
8 such access, if such person does not have a legal guardian,  
9 conservator or other legal representative, and a complaint has  
10 been received by the entity or agency with respect to such person  
11 or there is probable cause to believe that such person has been  
12 subject to abuse or neglect. The entity or agency obtaining  
13 access to a person's records shall meet all requirements for  
14 confidentiality as set out in this section;

15 (7) The entity or agency authorized to implement a system  
16 to protect and advocate the rights of persons with mental illness  
17 under the provisions of 42 U.S.C 10801 shall be able to obtain  
18 access to the records of a patient, resident or client who by  
19 reason of mental or physical condition is unable to authorize the  
20 system to have such access, who does not have a legal guardian,  
21 conservator or other legal representative and with respect to  
22 whom a complaint has been received by the system or there is  
23 probable cause to believe that such individual has been subject  
24 to abuse or neglect. The entity or agency obtaining access to a

1 person's records shall meet all requirements for confidentiality  
2 as set out in this section. The provisions of this subdivision  
3 shall apply to a person who has a significant mental illness or  
4 impairment as determined by a mental health professional  
5 qualified under the laws and regulations of the state;

6 (8) To mental health coordinators, but only to the extent  
7 necessary to carry out their duties under chapter 632, RSMo.

8 3. The facilities or services may disclose information and  
9 records under any of the following:

10 (1) As authorized by the patient, resident or client;

11 (2) To persons or agencies responsible for providing health  
12 care services to such patients, residents or clients;

13 (3) To the extent necessary for a recipient to make a claim  
14 or for a claim to be made on behalf of a recipient for aid or  
15 insurance;

16 (4) To qualified personnel for the purpose of conducting  
17 scientific research, management audits, financial audits, program  
18 evaluations or similar studies; provided, that such personnel  
19 shall not identify, directly or indirectly, any individual  
20 patient, resident or client in any report of such research, audit  
21 or evaluation, or otherwise disclose patient, resident or client  
22 identities in any manner;

23 (5) To the courts as necessary for the administration of  
24 chapter 211, RSMo, 475, RSMo, 552, RSMo, or 632, RSMo;

1           (6) To law enforcement officers or public health officers,  
2 but only to the extent necessary to carry out the  
3 responsibilities of their office, and all such law enforcement  
4 and public health officers shall be obligated to keep such  
5 information confidential;

6           (7) Pursuant to an order of a court or administrative  
7 agency of competent jurisdiction;

8           (8) To the attorney representing petitioners, but only to  
9 the extent necessary to carry out their duties under chapter 632,  
10 RSMo;

11           (9) To the department of social services or the department  
12 of health and senior services as necessary to report or have  
13 investigated abuse, neglect, or rights violations of patients,  
14 residents, or clients;

15           (10) To a county board established pursuant to sections  
16 205.968 to 205.972, RSMo 1986, but only to the extent necessary  
17 to carry out their statutory responsibilities. The county board  
18 shall not identify, directly or indirectly, any individual  
19 patient, resident or client.

20           4. The facility or program shall document the dates,  
21 nature, purposes and recipients of any records disclosed under  
22 this section and sections 630.145 and 630.150.

23           5. The records and files maintained in any court proceeding  
24 under chapter 632, RSMo, shall be confidential and available only

1 to the patient, his attorney, guardian, or, in the case of a  
2 minor, to a parent or other person having legal custody of the  
3 patient, and to the petitioner and his attorney. In addition,  
4 the court may order the release or use of such records or files  
5 only upon good cause shown, and the court may impose such  
6 restrictions as the court deems appropriate.

7 6. Nothing contained in this chapter shall limit the rights  
8 of discovery in judicial or administrative procedures as  
9 otherwise provided for by statute or rule.

10 7. The fact of admission of a voluntary or involuntary  
11 patient to a mental health facility under chapter 632, RSMo, may  
12 only be disclosed as specified in subsections 2 and 3 of this  
13 section.

14 630.167. 1. Upon receipt of a report, the department or  
15 its agents, contractors or vendors or the department of health  
16 and senior services, if such facility or program is licensed  
17 pursuant to chapter 197, RSMo, shall initiate an investigation  
18 within twenty-four hours.

19 2. If the investigation indicates possible abuse or neglect  
20 of a patient, resident or client, the investigator shall refer  
21 the complaint together with the investigator's report to the  
22 department director for appropriate action. If, during the  
23 investigation or at its completion, the department has reasonable  
24 cause to believe that immediate removal from a facility not

1 operated or funded by the department is necessary to protect the  
2 residents from abuse or neglect, the department or the local  
3 prosecuting attorney may, or the attorney general upon request of  
4 the department shall, file a petition for temporary care and  
5 protection of the residents in a circuit court of competent  
6 jurisdiction. The circuit court in which the petition is filed  
7 shall have equitable jurisdiction to issue an ex parte order  
8 granting the department authority for the temporary care and  
9 protection of the resident for a period not to exceed thirty  
10 days.

11 3. (1) Reports referred to in section 630.165 and the  
12 investigative reports referred to in this section shall be  
13 confidential, shall not be deemed a public record, and shall not  
14 be subject to the provisions of section 109.180, RSMo, or chapter  
15 610, RSMo; except that: complete copies all such reports shall  
16 be open and available to the parents or other guardian of the  
17 patient, resident, or client who is the subject of such report,  
18 except that the names and any other descriptive information of  
19 the complainant or other person mentioned in the reports shall  
20 not be disclosed unless such complainant or person specifically  
21 consents to such disclosure. All reports referred to in this  
22 section shall be admissible in any judicial proceedings or  
23 hearing in accordance with section 36.390, RSMo, or any  
24 administrative hearing before the director of the department of

1 mental health, or the director's designee. All such reports may  
2 be disclosed by the department of mental health to law  
3 enforcement officers and public health officers, but only to the  
4 extent necessary to carry out the responsibilities of their  
5 offices, and to the department of social services and the  
6 department of health and senior services, and to boards appointed  
7 pursuant to sections 205.968 to 205.990, RSMo, that are providing  
8 services to the patient, resident or client as necessary to  
9 report or have investigated abuse, neglect, or rights violations  
10 of patients, residents or clients provided that all such law  
11 enforcement officers, public health officers, department of  
12 social services' officers, department of health and senior  
13 services' officers, and boards shall be obligated to keep such  
14 information confidential;

15 (2) Except as otherwise provided in this section, the  
16 proceedings, findings, deliberations, reports and minutes of  
17 committees of health care professionals as defined in section  
18 537.035, RSMo, or mental health professionals as defined in  
19 section 632.005, RSMo, who have the responsibility to evaluate,  
20 maintain, or monitor the quality and utilization of mental health  
21 services are privileged and shall not be subject to the  
22 discovery, subpoena or other means of legal compulsion for their  
23 release to any person or entity or be admissible into evidence  
24 into any judicial or administrative action for failure to provide

1 adequate or appropriate care. Such committees may exist, either  
2 within department facilities or its agents, contractors, or  
3 vendors, as applicable. Except as otherwise provided in this  
4 section, no person who was in attendance at any investigation or  
5 committee proceeding shall be permitted or required to disclose  
6 any information acquired in connection with or in the course of  
7 such proceeding or to disclose any opinion, recommendation or  
8 evaluation of the committee or board or any member thereof;  
9 provided, however, that information otherwise discoverable or  
10 admissible from original sources is not to be construed as immune  
11 from discovery or use in any proceeding merely because it was  
12 presented during proceedings before any committee or in the  
13 course of any investigation, nor is any member, employee or agent  
14 of such committee or other person appearing before it to be  
15 prevented from testifying as to matters within their personal  
16 knowledge and in accordance with the other provisions of this  
17 section, but such witness cannot be questioned about the  
18 testimony or other proceedings before any investigation or before  
19 any committee;

20 (3) Nothing in this section shall limit authority otherwise  
21 provided by law of a health care licensing board of the state of  
22 Missouri to obtain information by subpoena or other authorized  
23 process from investigation committees or to require disclosure of  
24 otherwise confidential information relating to matters and

1 investigations within the jurisdiction of such health care  
2 licensing boards; provided, however, that such information, once  
3 obtained by such board and associated persons, shall be governed  
4 in accordance with the provisions of this subsection;

5 (4) Nothing in this section shall limit authority otherwise  
6 provided by law in subdivisions (5) and (6) of subsection 2 of  
7 section 630.140 concerning access to records by the entity or  
8 agency authorized to implement a system to protect and advocate  
9 the rights of persons with developmental disabilities under the  
10 provisions of 42 U.S.C. 6042 and the entity or agency authorized  
11 to implement a system to protect and advocate the rights of  
12 persons with mental illness under the provisions of 42 U.S.C.  
13 10801. In addition, nothing in this section shall serve to  
14 negate assurances that have been given by the governor of  
15 Missouri to the U.S. Administration on Developmental  
16 Disabilities, Office of Human Development Services, Department of  
17 Health and Human Services concerning access to records by the  
18 agency designated as the protection and advocacy system for the  
19 state of Missouri. However, such information, once obtained by  
20 such entity or agency, shall be governed in accordance with the  
21 provisions of this subsection.

22 4. Anyone who makes a report pursuant to this section or  
23 who testifies in any administrative or judicial proceeding  
24 arising from the report shall be immune from any civil liability

1 for making such a report or for testifying unless such person  
2 acted in bad faith or with malicious purpose.

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

7 6. No person who directs or exercises any authority in a  
8 residential facility, day program or specialized service shall  
9 evict, harass, dismiss or retaliate against a patient, resident  
10 or client or employee because he or she or any member of his or  
11 her family has made a report of any violation or suspected  
12 violation of laws, ordinances or regulations applying to the  
13 facility which he or she has reasonable cause to believe has been  
14 committed or has occurred.

15 7. Any person who is discharged as a result of an  
16 administrative substantiation of allegations contained in a  
17 report of abuse or neglect may, after exhausting administrative  
18 remedies as provided in chapter 36, RSMo, appeal such decision to  
19 the circuit court of the county in which such person resides  
20 within ninety days of such final administrative decision. The  
21 court may accept an appeal up to twenty-four months after the  
22 party filing the appeal received notice of the department's  
23 determination, upon a showing that:

24 (1) Good cause exists for the untimely commencement of the

1 request for the review;

2 (2) If the opportunity to appeal is not granted it will  
3 adversely affect the party's opportunity for employment; and

4 (3) There is no other adequate remedy at law.

5 660.071. 1. The division of senior services within the  
6 department of health and senior services shall create and make  
7 available through the department's Internet web site information  
8 that, to the best of their ability, provides a listing of all  
9 public or private companies or organizations providing services  
10 for older adults, including but not limited to adult day care,  
11 respite care, in-home care services, services provided by the  
12 area agency on aging and long-term care facilities operating in  
13 the state of Missouri. Such information shall:

14 (1) List the companies, organizations and facilities by  
15 category and by region of the state; and

16 (2) Include the services available through each company,  
17 organization and facility; and

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

23 (4) Include information to consumers on where to obtain  
24 inspection and survey information on listed companies, their

1 licensure status and any other information that will provide  
2 consumers with information regarding the quality of services  
3 offered by providers of senior services; and

4 (5) Include the information in the division's current  
5 senior guide.

6 2. The information in this section provided on the  
7 department's Internet web site shall be:

8 (1) Categorized by region of the state;

9 (2) Available in a format that is easily printed and  
10 downloaded; and

11 (3) Accessible to the area agencies on aging.

12 660.250. As used in sections 660.250 to 660.305, the  
13 following terms mean:

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

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

18 (3) "Department", the department of social services;

19 (4) "Director", director of the department of social  
20 services or his designees;

21 (5) "Eligible adult", a person sixty years of age or older  
22 who is unable to protect his or her own interests or is unable to  
23 meet his or her essential human needs or an adult with a  
24 handicap, as defined in section 660.053, between the ages of

1       eighteen and fifty-nine who is unable to protect his own  
2       interests or adequately perform or obtain services which are  
3       necessary to meet his essential human needs;

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

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

9               (8) "In-home services provider agency", a business entity  
10      under contract with the department or with a Medicaid  
11      participation agreement or an agency licensed by the department  
12      of health and senior services as provided in sections 197.400 to  
13      197.470, RSMo, which employs persons to deliver any kind of  
14      services provided for eligible adults in their private homes;

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

20              (10) "Likelihood of serious physical harm", one or more of  
21      the following:

22              (a) A substantial risk that physical harm to an eligible  
23      adult will occur because of his failure or inability to provide  
24      for his essential human needs as evidenced by acts or behavior

1 which has caused such harm or which gives another person probable  
2 cause to believe that the eligible adult will sustain such harm;

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

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

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

17 (11) "Neglect", the failure to provide services to an  
18 eligible adult by any person, firm or corporation with a legal or  
19 contractual duty to do so, when such failure presents either an  
20 imminent danger to the health, safety, or welfare of the client  
21 or a substantial probability that death or serious physical harm  
22 would result;

23 (12) "Protective services", services provided by the state  
24 or other governmental or private organizations or individuals

1 which are necessary for the eligible adult to meet his essential  
2 human needs.

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

8 2. All Medicaid participation agreements entered into  
9 between the department of social services and long-term care  
10 facilities shall include a requirement that such facilities  
11 comply with the provisions of sections 660.600 to 660.608  
12 regarding access to such facilities by ombudsmen, or  
13 representatives of the office of the state ombudsmen for long-  
14 term care facility residents and the office of advocacy and  
15 assistance for the elderly pursuant to chapter 660.

16 660.260. Upon receipt of a report, the department shall  
17 make a prompt and thorough investigation to determine whether or  
18 not an eligible adult is facing a likelihood of serious physical  
19 harm and is in need of protective services. The department shall  
20 provide for any of the following:

21 (1) Identification of the eligible adult and determination  
22 that the eligible adult is eligible for services;

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

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

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

5 (5) Assistance in locating and receiving necessary  
6 protective services; [or]

7 (6) Referral to the department of mental health for  
8 protective intervention and oversight of clients being served by  
9 the department of mental health; or

10 (7) The coordination and cooperation with other state  
11 agencies and public and private agencies in exchange of  
12 information and the avoidance of duplication of services.

13 660.263. 1. Reports made pursuant to sections 660.250 to  
14 660.295 shall be confidential and shall not be deemed a public  
15 record and shall not be subject to the provisions of section  
16 109.180, RSMo, or chapter 610, RSMo.

17 2. Such reports shall be accessible without court order for  
18 examination and copying only to the following persons or offices,  
19 or to their designees:

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

22 (2) The attorney general;

23 (3) The department of mental health for persons referred  
24 to, from, or through that department;

1 (4) Any appropriate law enforcement agency; and

2 (5) The eligible adult or [his] such adult's legal guardian  
3 or conservator, or any other person designated by the eligible  
4 adult.

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

6 (1) Such reporter specifically authorizes disclosure of his  
7 or her name; and

8 (2) The department determines that disclosure of the name  
9 of the reporter is necessary in order to prevent further harm to  
10 an eligible adult.

11 4. Any person who violates the provisions of this section,  
12 or who permits or encourages the unauthorized dissemination of  
13 information contained in the central registry and in reports and  
14 records made pursuant to sections 660.250 to 660.295, shall be  
15 guilty of a class A misdemeanor.

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

24 6. Although reports to the central registry may be made

1 anonymously, the department shall in all cases, after obtaining  
2 relevant information regarding the alleged abuse or neglect,  
3 attempt to obtain the name and address of any person making a  
4 report.

5 660.270. When the department receives a report that there  
6 is a likelihood of [serious physical harm] abuse or neglect, as  
7 defined in section 660.250, to an eligible adult and that [he is]  
8 such adult may be in need of protective services and the  
9 department is unable to conduct an investigation because any  
10 person has prevented such investigation, including but not  
11 limited to denial of access to the eligible adult [is barred by  
12 any person], the director may petition the appropriate court to  
13 enjoin interference with the investigation or for a warrant to  
14 enter upon the described premises and investigate the report.  
15 The application for the injunction or warrant shall identify the  
16 eligible adult and the facts and circumstances which require the  
17 issuance of the injunction or warrant. [The director may also  
18 seek an order to enjoin the person barring access from  
19 interfering with the investigation.] If the court finds that,  
20 based on the report and relevant circumstances and facts,  
21 probable cause exists showing that the eligible adult faces a  
22 likelihood of [serious physical harm and is] abuse or neglect, as  
23 defined in section 660.250, and may be in need of protective  
24 services and the director has been prevented by another person

1 from investigating the report, including but not limited to  
2 denial of access to the eligible adult, the court may issue the  
3 warrant or enjoin the interference with the investigation or  
4 both.

5 660.300. 1. Beginning January 1, 1993, when any physician,  
6 dentist, chiropractor, optometrist, podiatrist, [intern,] nurse,  
7 nurse practitioner, physician's assistant, hospital and clinic  
8 personnel engaged in examination, care, or treatment of persons,  
9 or other health practitioners, medical examiner, coroner, mental  
10 health professional, social worker, psychologist, minister,  
11 Christian Science practitioner, peace officer, probation or  
12 parole officer, law enforcement officer, pharmacist, physical  
13 therapist, in-home services owner, in-home services operator,  
14 in-home services employee, adult day care worker, or employee of  
15 the department of social services or of the department of health  
16 and senior services or of the department of mental health has  
17 reasonable cause to believe that an in-home services client has  
18 been abused or neglected, as a result of in-home services, he  
19 shall immediately report or cause a report to be made to the  
20 department.

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

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

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

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

13           6. If the investigation indicates possible abuse or neglect  
14 of an in-home services client, the investigator shall refer the  
15 complaint together with his report to the department director or  
16 his designee for appropriate action. If, during the  
17 investigation or at its completion, the department has reasonable  
18 cause to believe that immediate [removal] action is necessary to  
19 protect the in-home services client from abuse or neglect, the  
20 department or the local prosecuting attorney may, or the attorney  
21 general upon request of the department shall, file a petition for  
22 temporary care and protection of the in-home services client in a  
23 circuit court of competent jurisdiction. The circuit court in  
24 which the petition is filed shall have equitable jurisdiction to

1 issue an ex parte order granting the department authority for the  
2 temporary care and protection of the in-home services client, for  
3 a period not to exceed thirty days.

4 7. Reports shall be confidential, as provided under section  
5 660.320.

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

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

17 10. No person who directs or exercises any authority in an  
18 in-home services provider agency shall harass, dismiss or  
19 retaliate against an in-home services client or an in-home  
20 services employee because he or any member of his family has made  
21 a report of any violation or suspected violation of laws,  
22 standards or regulations applying to the in-home services  
23 provider agency or any in-home services employee which he has  
24 reasonable cause to believe has been committed or has occurred.

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

3           12. The department shall maintain the employee  
4 disqualification list and place on the employee disqualification  
5 list the names of any persons who have been finally determined by  
6 the department, pursuant to section 660.315, to have recklessly,  
7 knowingly or purposely abused or neglected an in-home services  
8 client while employed by an in-home services provider agency.

9           660.302. The department of health and senior services shall  
10 investigate incidents and reports of elder abuse using the  
11 procedures established in sections 660.250 to 660.295 and  
12 notwithstanding any other provision of the law to the contrary,  
13 shall promptly refer all suspected cases of elder abuse to the  
14 appropriate law enforcement agency and prosecutor and determine  
15 whether protective services are required pursuant to sections  
16 660.250 to 660.295.

17           660.322. The department and law enforcement shall share  
18 resources as necessary to incorporate into current training  
19 curriculum for all law enforcement and investigative staff, the  
20 proper handling of cases involving elder abuse. The department  
21 and law enforcement shall develop a checklist to guide personnel  
22 during elder abuse investigations. Additionally, training shall  
23 be made available to noninvestigatory personnel and volunteers  
24 regarding the identification and reporting of elder abuse.

1           660.630. 1. Notwithstanding any provision of law to the  
2 contrary, until the provisions of subdivision (25) of subsection  
3 1 of section 208.151, RSMo, is fully implemented at one hundred  
4 percent of poverty, an otherwise eligible individual shall be  
5 eligible for payment of Medicaid allowable expenses in accordance  
6 with department of social services policy in effect on January 1,  
7 2002. This section shall be null and void if after  
8 investigation, appeal, and final determination the Center for  
9 Medicare and Medicaid Services declares this policy violates the  
10 Medicaid program rules for a 209(b) state.

11           2. The personal independence commission shall study the  
12 issue of spend down. Such study shall include, but not be  
13 limited to, the effects of spend down on the population served, a  
14 comparison of Missouri's spend down program with similar programs  
15 in other states, develop alternatives that will serve the  
16 population's needs in a manner that is equitable but flexible to  
17 the needs and circumstances of the individual, encourages  
18 responsible utilization of the services, and is fiscally  
19 responsible. By December 1, 2002, the commission shall present  
20 its findings and recommendations to the governor and general  
21 assembly.

22           Section 1. No long-term care facility shall be more than  
23 one hundred twenty days delinquent in payments to vendors of  
24 essential services, including but not limited to vendors of food,

1 utilities, maintenance or pharmaceutical supplies, if such  
2 delinquency affects the quality of care received by the  
3 facility's residents. Upon receipt and verification of a  
4 complaint of delinquency of payment from a vendor of essential  
5 services, the department of health and senior services may  
6 require the facility to draft a plan of correction. If the  
7 department determines that the corrective measures are inadequate  
8 or have not been implemented, the department may impose sanctions  
9 against the facility, including revocation of the facility's  
10 license.

11 Section 2. 1. The division of medical services in the  
12 department of social services shall promulgate rules to permit a  
13 Medicaid reimbursement rate adjustment for participating  
14 long-term care facilities that experience a change in ownership.  
15 Such rules shall include provisions that:

16 (1) Permit any participating long-term care facility with a  
17 prospective rate to make a written request for an adjustment to  
18 its prospective rate due to a change in ownership which occurred  
19 within the last four years;

20 (2) Require such written request to clearly and  
21 specifically identify the conditions for which the rate  
22 adjustment is sought;

23 (3) Require that the dollar amount of the requested rate  
24 adjustment be supported by complete, accurate, and documented

1 records satisfactory to the division of medical services; and

2 (4) Require the division of medical services to consider a  
3 request withdrawn if the division makes a written request for  
4 additional information and the facility does not comply within  
5 ninety days of such request.

6 2. A rate adjustment based on a change in ownership shall  
7 be permitted if the following conditions are met:

8 (1) No principal of either the new owner or operating  
9 company of the facility was involved in the previous ownership;

10 (2) The facility must demonstrate that costs have increased  
11 as a result of the change of ownership. Increase in costs above  
12 the state average as of July 1, 2002, shall not be considered and  
13 the provider shall demonstrate that the increase in cost  
14 contributed to improved quality of care, life or environment for  
15 the residents; and

16 (3) The facility must demonstrate that current  
17 reimbursement is inadequate to meet the cost of providing the  
18 improved care, environment, and enhanced quality of life of the  
19 resident.

20 3. The division of medical services shall review on a  
21 case-by-case basis any request made by a facility and shall  
22 consider improved department of health and senior services  
23 surveys, costs prior to and after the change of ownership,  
24 licensure applications, as well as any other documentation

1 provided by the facility or requested by the division of medical  
2 services. Rate adjustments shall not exceed the calculated  
3 per-resident per-day cost shown on the most recent cost report;  
4 except that additional capital components may be considered if  
5 the facility can demonstrate that the capital expenditure did in  
6 fact enhance the environment for the resident.

7 4. The rate increase shall be calculated as follows:

8 (1) The rate adjustment shall be based on either the  
9 facility's most recently filed cost report which occurred under  
10 the new ownership or on the state average cost, as of July 1,  
11 2002, whichever is lower. The division shall not have the  
12 authority to disallow certain cost centers which may be inflated  
13 due to the type of ownership or management and may elect to use  
14 average state cost in any such disallowed center;

15 (2) For capitalized costs, a capital component per diem  
16 shall be calculated pursuant to 13 CSR 70-10. The rate adjustment  
17 shall be the difference between the capital component per diem  
18 prior to the change in ownership and the capital component per  
19 diem after the change in ownership.

20 Section 3. 1. By July 1, 2003, the department shall  
21 establish a telephone check-in pilot project. Such pilot project  
22 shall require that a telephone check-in system be established for  
23 in-home services employees, as defined in section 660.250, RSMo,  
24 to accurately document the actual time that such employees spend

1 in clients' homes by requiring such employees to clock in and out  
2 of the client's home by telephone. As part of the pilot project,  
3 the participating in-home service providers shall report to the  
4 department the actual time spent in each client's home. The  
5 department shall analyze for twelve consecutive months the fiscal  
6 impact of using actual time spent in each client's home rounded  
7 to the nearest half-hour versus current payment policies. Upon  
8 completion of the analysis of twelve months worth of actual in-  
9 home hours, the department shall propose payment policy changes  
10 if analysis shows that the costs are neutral, or make a budget  
11 request if analysis shows that the costs increase.

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

17 Section 4. 1. Any in-home provider agency aggrieved by a  
18 decision of the department to revoke a contract or impose  
19 sanctions may seek a determination thereon by the administrative  
20 hearing commission pursuant to section 621.045, RSMo, et seq.;  
21 except that, the petition must be filed with the administrative  
22 hearing commission within fifteen days after the mailing or  
23 delivery of notice to the owner or operator.

24 2. The administrative hearing commission shall accept

1 evidence on and consider the effect of the provider's continued  
2 participation in the program on the health, safety, and welfare  
3 of the clients and the program. The person applying for such  
4 stay order shall not be granted such stay order unless such  
5 person has a reasonable likelihood of success upon the merits of  
6 his or her claim.

7 3. The administrative hearing commission may stay the  
8 revocation of such contract, pending the commission's findings  
9 and determination of the cause, upon such conditions, with or  
10 without the agreement of the parties, as the commission deems  
11 necessary and appropriate not limited to the posting of bond or  
12 other security; except that, the commission shall not grant a  
13 stay or if a stay has already been entered, shall set aside its  
14 stay, unless the commission finds that the provider owner or  
15 operator has established reason to believe that continued  
16 operation of a facility pending the commission's final  
17 determination would not present an imminent danger to the health,  
18 safety, or welfare of any client or a substantial probability  
19 that death or serious physical harm would result. In such cases,  
20 the burden of going forward with the evidence as well as the  
21 ultimate burden of persuasion is upon the provider. In any case  
22 in which the department has refused to issue a contract, the  
23 commission shall have no authority to stay or to require the  
24 issuance of a contract pending final determination by the

1 commission.

2 4. If the commission finds that a stay is appropriate  
3 pursuant to subsection 3 of this section, the commission shall  
4 not make such stay effective before the provider posts a bond  
5 sufficient to protect the interest of the state.

6 5. Stays granted to in-home providers shall, as a condition  
7 of the stay, require a minimum that the provider under the stay  
8 operate under the same contractual requirements and regulations  
9 as all other providers in the program.

10 6. The administrative hearing commission shall make the  
11 final decision as to the revocation of a contract based upon the  
12 circumstances and conditions as they existed at the time of the  
13 action of the department and not based upon circumstances and  
14 conditions at the time of the hearing or decision of the  
15 commission.

16 7. Any person aggrieved by a final decision of the  
17 administrative hearing commission, including the department, may  
18 seek judicial review of such decision by filing a petition for  
19 review in the court of appeals for the district in which the  
20 provider is located. Review shall be had, except as modified  
21 herein, in accordance with the provisions of sections 621.189 and  
22 621.193, RSMo.

23 [197.367. Upon application for renewal  
24 by any residential care facility I or II  
25 which on the effective date of this act has  
26 been licensed for more than five years, is

1 licensed for more than fifty beds and fails  
2 to maintain for any calendar year its  
3 occupancy level above thirty percent of its  
4 then licensed beds, the division of aging  
5 shall license only fifty beds for such  
6 facility.]