

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILLS NOS. 1654 & 1156

1 AN ACT

2 To repeal sections 191.900, 191.910, 197.310,
3 197.317, 197.318, 197.340, 197.455, 198.006,
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, 198.086, 198.088,
7 198.090, 198.093, 198.525, 198.526, 198.531,
8 198.532, 208.156, 210.933, 210.936, 344.050,
9 565.186, 565.188, 565.190, 630.140, 630.167,
10 660.050, 660.263, 660.270, 660.300, 660.305,
11 660.315, 660.317, and 660.320, RSMo, and to
12 enact in lieu thereof sixty-five new sections
13 relating to protection of the elderly, with
14 penalty provisions.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
16 AS FOLLOWS:

17 Section A. Sections 191.900, 191.910, 197.310, 197.317,
18 197.318, 197.340, 197.455, 198.006, 198.012, 198.022, 198.026,
19 198.029, 198.032, 198.036, 198.039, 198.067, 198.070, 198.073,
20 198.080, 198.082, 198.085, 198.086, 198.088, 198.090, 198.093,
21 198.525, 198.526, 198.531, 198.532, 208.156, 210.933, 210.936,
22 344.050, 565.186, 565.188, 565.190, 630.140, 630.167, 660.050,
23 660.263, 660.270, 660.300, 660.305, 660.315, 660.317, and
24 660.320, RSMo, are repealed and sixty-five sections enacted in
25 lieu thereof, to be known as sections 187.010, 187.015, 187.020,

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.

1 187.024, 187.028, 187.030, 187.034, 187.040, 187.050, 187.080,
2 187.084, 187.087, 187.090, 187.100, 187.102, 191.900, 191.910,
3 197.310, 197.317, 197.318, 197.340, 197.370, 197.455, 198.006,
4 198.012, 198.019, 198.022, 198.026, 198.029, 198.030, 198.032,
5 198.036, 198.039, 198.067, 198.068, 198.073, 198.080, 198.082,
6 198.085, 198.086, 198.088, 198.090, 198.093, 198.094, 198.525,
7 198.526, 198.531, 198.532, 208.156, 210.933, 210.936, 344.050,
8 491.076, 565.200, 630.140, 630.167, 660.030, 660.050, 660.051,
9 660.071, 660.252, 660.263, 660.270, 660.302, and 1, to read as
10 follows:

11 187.010. As used in this chapter unless the context clearly
12 indicates otherwise, the following terms mean:

13 (1) "Abuse", the infliction of physical, sexual or
14 emotional injury or harm, the taking, obtaining, using,
15 transferring, concealing, appropriating or taking possession of
16 property of another person without such person's consent, or the
17 wasting of financial resources including financial exploitation;

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

19 (3) "Department", the Missouri department of health and
20 senior services;

21 (4) "Director", the director of the department of health
22 and senior services;

23 (5) "Eligible adult", a person sixty years of age or older,
24 or an adult with a disability, as defined in section 660.053,
25 RSMo, between the ages of eighteen and fifty-nine;

1 (6) "Facility" or "long-term care facility", any
2 residential care facility I, residential care facility II,
3 intermediate care facility or skilled nursing facility;

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

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

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

12 (10) "In-home services provider agency", a business entity
13 under contract with the department of social services or the
14 department of health and senior services, or a Medicaid
15 participation agreement, or an agency licensed by the department
16 of health and senior services pursuant to sections 197.400 to
17 197.470, RSMo, that employs persons to deliver any kind of
18 services provided for eligible adults in their private homes;

19 (11) "Intermediate care facility", any premises, other than
20 a residential care facility I, residential care facility II or
21 skilled nursing facility, which is utilized by its owner,
22 operator or manager to provide twenty-four hour accommodation,
23 board, personal care, and basic health and nursing care services
24 under the daily supervision of a licensed nurse and under the
25 direction of a licensed physician to three or more residents

1 dependent for care and supervision and who are not related within
2 the fourth degree of consanguinity or affinity to the owner,
3 operator or manager of the facility;

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

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

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

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

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

1 harm;

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

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

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

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

21 (17) "Residential care facility I", any premises, other
22 than a residential care facility II, intermediate care facility
23 or skilled nursing facility, which is utilized by its owner,
24 operator or manager to provide twenty-four hour care to three or
25 more residents, who are not related within the fourth degree of

1 consanguinity or affinity to the owner, operator or manager of
2 the facility and who need or are provided with shelter, board and
3 with protective oversight, which may include storage and
4 distribution or administration of medications and care during
5 short-term illness or recuperation;

6 (18) "Residential care facility II", any premises, other
7 than a residential care facility I, an intermediate care facility
8 or a skilled nursing facility, which is utilized by its owner,
9 operator or manager to provide twenty-four hour accommodation,
10 board and care to three or more residents who are not related
11 within the fourth degree of consanguinity or affinity to the
12 owner, operator, or manager of the facility and who need or are
13 provided with supervision of diets, assistance in personal care,
14 storage and distribution or administration of medications,
15 supervision of health care under the direction of a licensed
16 physician and protective oversight, including care during
17 short-term illness or recuperation;

18 (19) "Skilled nursing facility", any premises, other than a
19 residential care facility I, a residential care facility II or an
20 intermediate care facility, which is utilized by its owner,
21 operator or manager to provide for twenty-four hour
22 accommodation, board and skilled nursing care and treatment
23 services to at least three residents who are not related within
24 the fourth degree of consanguinity or affinity to the owner,
25 operator or manager of the facility. Skilled nursing care and

1 treatment services are those services commonly performed by or
2 under the supervision of a registered professional nurse for
3 individuals requiring twenty-four hours a day care by licensed
4 nursing personnel including acts of observation, care and counsel
5 of the aged, ill, injured or infirm, the administration of
6 medications and treatments as prescribed by a licensed physician
7 or dentist, and other nursing functions requiring substantial
8 specialized judgment and skill.

9 187.015. The department may promulgate rules necessary to
10 implement the provisions of this chapter. No rule or portion of
11 a rule promulgated under the authority of this chapter shall
12 become effective unless it has been promulgated pursuant to
13 chapter 536, RSMo.

14 187.020. 1. When any physician, dentist, chiropractor,
15 optometrist, podiatrist, medical resident, intern, nurse
16 practitioner, physician's assistant, nurse, hospital and clinic
17 personnel engaged in examination, care or treatment of persons,
18 other health practitioners, funeral directors, medical examiner,
19 coroner, psychologist, mental health professional, social worker,
20 minister, Christian Science practitioner, pharmacist, physical
21 therapist, facility administrator, employee in a facility or
22 employee of the department of social services, the department of
23 health and senior services, or the department of mental health,
24 in-home services owner, operator or employee, adult day care
25 worker, probation or parole officer, peace officer, law

1 enforcement official, or other person with responsibility for the
2 care of a person sixty years of age or older or an eligible adult
3 believes or has reasonable cause to believe that such person or
4 adult, including a resident of a long-term care facility, an
5 individual residing in their home or residence, or an in-home
6 services client, has been abused or neglected, he or she shall,
7 within twenty-four hours, report or cause a report to be made to
8 the department.

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

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

19 4. Every person who has been previously convicted of or
20 pled guilty to making a false report to the department and who is
21 subsequently convicted of making a false report pursuant to this
22 section is guilty of a class D felony.

23 5. Anyone, except any person who has abused or neglected a
24 resident in a long-term care facility, an individual residing in
25 their home or residence, or an in-home services client, who makes

1 a report pursuant to this section or who testifies in any
2 administrative or judicial proceeding arising from the report
3 shall be immune from any civil or criminal liability for making
4 such a report or for testifying except for liability for perjury,
5 unless such person acted negligently, recklessly, in bad faith,
6 or with malicious purpose. Any person who purposely files a
7 false report of elder abuse or neglect pursuant to this section
8 or section 187.030 is guilty of a class A misdemeanor.

9 6. Evidence of prior convictions of false reporting shall
10 be heard by the court, out of the hearing of the jury, prior to
11 the submission of the case to the jury, and the court shall
12 determine the existence of the prior convictions.

13 7. The administrator of a facility shall contact the local
14 coroner immediately upon the death of any resident of the
15 facility and provide the coroner with an outline of the
16 circumstances regarding the death of such resident. A written
17 report containing the information provided to the local coroner
18 shall be submitted to the department within one business day of
19 the death of the resident. The department shall maintain
20 statistics on all such reports.

21 187.024. 1. If a report made pursuant to section 187.020
22 involves a resident of a long-term care facility, the report
23 shall contain, if known, the name and address of the facility,
24 the name of the resident, information regarding the nature of the
25 abuse or neglect, the name of the complainant and any other

1 information which might be helpful in an investigation.

2 2. Upon receipt of a report pursuant to section 187.020
3 involving a resident of a long-term care facility, the department
4 shall initiate an investigation within twenty-four hours and, as
5 soon as possible during the course of the investigation, shall
6 notify the resident's next of kin or responsible party of the
7 report and the investigation and further notify them whether the
8 report was substantiated or unsubstantiated unless such
9 resident's next of kin is the alleged perpetrator of the abuse or
10 neglect. For reports involving imminent harm, the department
11 shall commence an on-site investigation within twenty-four hours.
12 As provided in section 187.030, suspected reports of elder abuse
13 shall be promptly reported by the department to the appropriate
14 law enforcement agency.

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

1 is filed shall have equitable jurisdiction to issue an ex parte
2 order granting the department authority for the temporary care
3 and protection of the resident for a period not to exceed thirty
4 days.

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

7 (1) When deemed by the department to be in the best
8 interest of the resident, the department may inform the
9 resident's designee, any next of kin of the resident, any person
10 with durable power of attorney for the resident, and any person
11 with legal guardianship for the resident that a report of abuse
12 or neglect has been received by the department pursuant to
13 section 187.020 and an investigation has been initiated. If
14 notified, the department shall ask such designee, next of kin,
15 person with durable power of attorney, and person with legal
16 guardianship whether he or she wishes to receive the
17 investigation report of the department regarding the allegations
18 of abuse or neglect of the resident;

19 (2) If the resident's designee, any next of kin of the
20 resident, any person with durable power of attorney for the
21 resident, or any person who has legal guardianship for the
22 resident requests receipt of the investigation report pursuant to
23 subdivision (1) of this subsection, the department shall, within
24 a reasonable time, provide such report to such persons unless for
25 good cause the department determines the release of such report

1 not to be in the best interest of the resident; and

2 (3) Such information shall not be reported to any person
3 pursuant to subdivisions (1) and (2) of this subsection if such
4 person is the alleged perpetrator of the abuse or neglect, or if
5 the resident objects.

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

10 6. No person who directs or exercises any authority in a
11 facility shall evict, harass, dismiss, or retaliate against a
12 resident or employee because such resident or employee or any
13 member of such resident's or employee's family has made a report
14 of any violation or suspected violation of laws, ordinances or
15 regulations applying to the facility which the resident, the
16 resident's family or an employee has reasonable cause to believe
17 has been committed or has occurred. Through the existing
18 department information and referral telephone contact line,
19 residents, their families, and employees of a facility shall be
20 able to obtain information about their rights, protections and
21 options in cases of eviction, harassment, dismissal or
22 retaliation due to a report being made pursuant to this section.

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

25 8. The department shall maintain the employee

1 disqualification list and place on the employee disqualification
2 list the names of any persons who have been finally determined by
3 the department pursuant to section 187.080 to have recklessly,
4 knowingly, or purposely abused or neglected a resident, including
5 persons employed in any facility.

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

13 187.028. 1. If a report is made pursuant to section
14 187.020 that involves an eligible adult not residing in a
15 facility, the report shall contain, if known, the names and
16 addresses of the eligible adult, information regarding the nature
17 of the abuse or neglect, the name of the complainant, and any
18 other information which may be helpful in an investigation. In
19 addition, if a report made pursuant to section 187.020 involves
20 an eligible adult who is also an in-home services client, the
21 report shall also contain the names and addresses of the in-home
22 services provider agency and the in-home services employee.

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

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

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

20 (1) When deemed by the department to be in the best
21 interest of the eligible adult, the department may inform the
22 eligible adult's designee, any next of kin of the eligible adult,
23 any person with durable power of attorney for the eligible adult,
24 and any person with legal guardianship for the eligible adult
25 that a report of abuse or neglect has been received by the

1 department pursuant to section 187.020 and an investigation has
2 been initiated. If notified, the department shall ask such
3 designee, next of kin, person with durable power of attorney, and
4 person with legal guardianship whether he or she wishes to
5 receive the investigation report of the department regarding the
6 allegations of abuse or neglect of the eligible adult not
7 residing in a facility;

8 (2) If the eligible adult's designee, any next of kin of
9 the eligible adult, any person with durable power of attorney for
10 the eligible adult, or any person who has legal guardianship for
11 the eligible adult requests receipt of the investigation report
12 pursuant to subdivision (1) of this subsection, the department
13 shall, within a reasonable time, provide such report to such
14 persons unless for good cause the department determines the
15 release of the report is not in the best interest of the eligible
16 adult; and

17 (3) Such information shall not be reported to any person
18 pursuant to subdivisions (1) and (2) of this subsection if such
19 person is the alleged perpetrator of the abuse or neglect.

20 5. Within five working days after a report required to be
21 made pursuant to this section is received, the person making the
22 report shall be notified orally or in writing of its receipt and
23 of the initiation of the investigation.

24 6. No person, including any person who directs or exercises
25 any authority in an in-home services provider agency, shall

1 harass, dismiss, or retaliate against an eligible adult not
2 residing in a facility or an in-home services employee because
3 the eligible adult, employee, or any member of his or her family
4 has made a report of any violation or suspected violation of
5 laws, standards, or regulations applying to the in-home services
6 provider agency or any in-home services employee which the
7 eligible adult, employee, or family member thereof has reasonable
8 cause to believe has been committed or has occurred.

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

12 8. The department shall maintain the employee
13 disqualification list and place on the employee disqualification
14 list the names of any persons who have been finally determined by
15 the department pursuant to section 187.080 to have recklessly,
16 knowingly, or purposely abused or neglected an eligible adult not
17 residing in a facility, including persons employed by an in-home
18 services provider agency.

19 187.030. 1. The department shall investigate incidents and
20 reports of elder abuse and neglect using the procedures
21 established in sections 660.250 to 660.295, RSMo, and shall
22 promptly refer all suspected cases of elder abuse to the
23 appropriate law enforcement agency and shall determine whether
24 protective services are required pursuant to sections 660.250 to
25 660.295, RSMo.

1 2. The department and law enforcement agencies shall
2 require training and cross-training of all investigatory
3 personnel and other persons as deemed necessary regarding the
4 proper handling of cases involving elder abuse. All
5 noninvestigatory personnel and volunteers for local area agencies
6 on aging shall be instructed on certain aspects of elder abuse,
7 identification, and reporting procedures to ensure that such
8 personnel and volunteers are able to recognize potential cases of
9 abuse or neglect and take the necessary steps to properly report
10 elder abuse or neglect cases, including instruction related to
11 the preservation of evidence. Nothing in this subsection shall
12 be construed to require noninvestigatory personnel and volunteers
13 to act in an investigatory capacity in investigations of elder
14 abuse or neglect. The department, in cooperation with law
15 enforcement agencies, shall, by rule, develop a checklist for
16 department and law enforcement personnel to follow when
17 investigating possible elder abuse.

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

21 187.034. Any person, official, or institution complying
22 with the provisions of section 187.020 in the making of a report
23 or in cooperating with the department in any of its activities
24 pursuant to sections 187.020 to 187.050, except any person,
25 official, or institution violating section 565.180, 565.182 or

1 565.184, RSMo, shall be immune from any civil or criminal
2 liability for making such a report or in cooperating with the
3 department, unless such person acted negligently, recklessly, in
4 bad faith or with malicious purpose.

5 187.040. Any person while employed by a provider licensed
6 pursuant to chapter 190 or 197, RSMo, or sections 660.400 to
7 660.420, RSMo, is finally determined to have recklessly,
8 knowingly, or purposely abused, neglected, or financially
9 exploited a person sixty years of age or older or an eligible
10 adult shall be placed on the department's employee
11 disqualification list.

12 187.050. 1. Any person having reasonable cause to believe
13 that a misappropriation of property or funds of an eligible adult
14 not residing in a facility or the falsification of any documents
15 verifying in-home service delivery to such eligible adult has
16 occurred shall report such information to the department.

17 2. For each report the department shall attempt to obtain
18 the names and addresses of the in-home services provider agency,
19 the in-home services employee, the in-home services client, the
20 eligible adult not residing in a facility, information regarding
21 the nature of the misappropriation or falsification, the name of
22 the complainant, and any other information which may be helpful
23 in an investigation.

24 3. Any in-home services provider agency or in-home services
25 employee, or any person who puts to his or her own use or the use

1 of the in-home services provider agency, or otherwise diverts any
2 personal property or funds from an eligible adult not residing in
3 a facility, or falsifies any documents for service delivery to an
4 eligible adult not residing in a facility is guilty of a class A
5 misdemeanor.

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

9 5. If the investigation indicates probable misappropriation
10 of property or funds or falsification of any documents for
11 service delivery of an eligible adult not residing in a facility,
12 the investigator shall refer the complaint together with the
13 investigator's report to the department director or the
14 director's designee for appropriate action.

15 6. Reports shall be confidential except pursuant to lawful
16 subpoena, as provided in section 187.087, provided that:

17 (1) When deemed by the department to be in the best
18 interest of the eligible adult, the department may inform the
19 eligible adult's designee, any next of kin of the eligible adult,
20 any person with durable power of attorney for the eligible adult,
21 and any person with legal guardianship for the eligible adult
22 that a report of misappropriation of property or funds of the
23 eligible adult has been received by the department pursuant to
24 this section and an investigation has been initiated. If
25 notified, the department shall ask such designee, next of kin,

1 person with durable power of attorney, and person with legal
2 guardianship whether he or she wishes to receive the
3 investigation report of the department regarding the allegations
4 of misappropriation of property or funds of the eligible adult
5 not residing in a facility;

6 (2) If the eligible adult's designee, any next of kin of
7 the eligible adult, any person with durable power of attorney for
8 the eligible adult, or any person who has legal guardianship for
9 the eligible adult requests receipt of the investigation report
10 pursuant to subdivision (1) of this subsection, the department
11 shall, within a reasonable time, provide such report to such
12 persons unless for good cause the department determines the
13 release of the report not to be in the best interest of the
14 eligible adult; and

15 (3) Such information shall not be reported to any person
16 pursuant to subdivisions (1) and (2) of this subsection if such
17 person is the alleged perpetrator of the misappropriation or
18 falsification, or if the eligible adult not residing in a
19 facility objects.

20 7. Anyone, except any person participating in or benefiting
21 from the misappropriation of funds, who makes a report pursuant
22 to this section or who testifies in any administrative or
23 judicial proceeding arising from the report shall be immune from
24 any civil or criminal liability for making such a report or for
25 testifying except for liability for perjury, unless such person

1 acted negligently, recklessly, in bad faith, or with malicious
2 purpose.

3 8. 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 orally or in writing of its receipt and
6 of the initiation of the investigation.

7 9. No person shall harass, dismiss, or retaliate against an
8 eligible adult not residing in a facility or an in-home services
9 employee because the eligible adult, employee, or any member of
10 his or her family has made a report of any violation or suspected
11 violation of laws, standards, or regulations applying to the in-
12 home services provider agency or any in-home services employee
13 which the eligible adult, employee, or family member thereof has
14 reasonable cause to believe has been committed or has occurred.

15 10. The department shall maintain the employee
16 disqualification list and place on the employee disqualification
17 list the names of any persons who have been finally determined by
18 the department to, pursuant to section 187.080, have knowingly
19 misappropriated any property or funds or falsified any documents
20 for service delivery of an eligible adult not residing in a
21 facility, including persons employed by an in-home services
22 provider agency.

23 187.080. 1. After an investigation and a determination has
24 been made to place a person's name on the employee
25 disqualification list, such person shall be notified in writing

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

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

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

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

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

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

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

24 4. If a person's name is included on the employee
25 disqualification list without notice by the department, such

1 person may file a request with the department for removal of the
2 name or for a hearing. Within thirty days after receipt of the
3 request, the department shall either remove the name from the
4 list or grant a hearing and set a date for hearing.

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

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

21 7. A person aggrieved by the decision following the hearing
22 shall be informed of his or her right to seek judicial review as
23 provided in chapter 536, RSMo. If the person fails to appeal the
24 director's findings, those findings shall constitute a final
25 determination that the person shall be placed on the employee

1 disqualification list.

2 8. A decision by the director shall be inadmissible in any
3 civil action brought against a facility or the in-home services
4 provider agency and arising out of the facts and circumstances
5 which brought about the employment disqualification proceeding,
6 unless the civil action is brought against the facility or the
7 in-home services provider agency by the department or one of its
8 divisions, or production is required by lawful subpoena.

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

11 (1) Any person who has, within the past ten years, been
12 convicted of, pled guilty to or nolo contendere to any felony
13 stealing offense or any felony offense in chapter 187, 198, 334,
14 565, 566, 568, 573, or 660, RSMo, or section 570.145, RSMo;

15 (2) Based on substantiated reports:

16 (a) Any person who intentionally or negligently inflicts
17 serious physical injury or causes the death of another person; or

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

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

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

1 (2) The degree of physical, sexual, or emotional injury or
2 harm caused to a resident or eligible adult not residing in a
3 facility; or the degree of the imminent danger to the health,
4 safety, or welfare of a resident or eligible adult not residing
5 in a facility;

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

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

11 (5) Any mitigating circumstances;

12 (6) Any aggravating circumstances; and

13 (7) Whether alternative sanctions resulting in conditions
14 of continued employment are appropriate in lieu of placing a
15 person's name on the employee disqualification list. Such
16 conditions of employment may include, but are not limited to,
17 additional training and employee counseling. Conditional
18 employment shall terminate upon the expiration of the designated
19 length of time and the person's submitting documentation which
20 fulfills the department's requirements.

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

25 12. The department shall provide the list maintained

1 pursuant to this section to other state departments upon request
2 and to every local area agency on aging, or any person,
3 corporation, or association who:

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

6 (2) Provides in-home services under contract with the
7 department of health and senior services or the department of
8 social services;

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

11 (4) Is approved by the department of health and senior
12 services to issue certificates for nursing assistants training;

13 (5) Is an entity licensed pursuant to chapter 197, RSMo.
14 The department shall inform any person listed above who inquires
15 of the department whether a particular name is on the list. The
16 department may require that the request be made in writing;

17 (6) Is an entity licensed pursuant to chapter 190, RSMo; or

18 (7) Is an adult day care program licensed pursuant to
19 sections 660.400 to 660.420, RSMo.

20 13. No person, corporation, or association responsible for
21 providing health care service shall knowingly employ any person
22 who is on the employee disqualification list. Any such person,
23 corporation, or association, who declines to employ or terminates
24 a person whose name is listed in this section shall be immune
25 from suit by that person or anyone else acting for or in behalf

1 of that person for the failure to employ or for the termination
2 of the person whose name is listed on the employee
3 disqualification list.

4 14. Any employer who is required to discharge an employee
5 because the employee was placed on a disqualification list
6 maintained by the department after the date of hire shall not be
7 charged for unemployment insurance benefits based on wages paid
8 to the employee for work prior to the date of discharge, pursuant
9 to section 288.100, RSMo.

10 15. Any person who has been listed on the employee
11 disqualification list, other than a person who has a lifetime
12 listing, may request that the director remove his or her name
13 from the employee disqualification list. The request shall be in
14 writing and may not be made more than once every twelve months.
15 The request will be granted by the director upon a clear showing,
16 by written submission only, that the person will not commit
17 additional acts of abuse, neglect, misappropriation of the
18 property or funds, or the falsification of any documents of
19 service delivery to an eligible adult not residing in a facility.
20 The director or the director's designee may make conditional the
21 removal of a person's name from the list on any terms that the
22 director or the director's designee deems appropriate and failure
23 to comply with such terms may result in the person's name being
24 relisted. The director's or designee's determination of whether
25 to remove the person's name from the list is not subject to

1 appeal.

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

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

6 (2) Provides in-home services under contract with the
7 department of health and senior services or the department of
8 social services;

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

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

12 (5) Is a public or private facility, day program,
13 residential facility, or specialized service operated, funded, or
14 licensed by the department of mental health;

15 (6) Is an entity licensed pursuant to chapter 190, RSMo;

16 (7) Is an adult day care program licensed pursuant to
17 sections 660.400 to 660.420, RSMo; or

18 (8) Employs persons who provide personal care assistance
19 services. For purposes of this subdivision, "provider" does not
20 include the individual receiving personal care assistance or any
21 member of such individual's immediate family.

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

25 3. For any person hired for a full-time, part-time, or

1 temporary position, including temporary employees hired through
2 an employment agency, who will have contact with any patient or
3 resident, the provider or the employment agency shall, within
4 forty-eight hours and prior to such person or employee having any
5 contact with a patient or resident:

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

16 (2) Make an inquiry to the department, whether the person
17 is listed on the employee disqualification list as provided in
18 section 187.080.

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

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

25 (1) Sign a consent form as required by section 43.540,

1 RSMo, so the provider may request a criminal records review;

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

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

10 6. An applicant who knowingly fails to disclose his or her
11 criminal history as required in subsection 5 of this section is
12 guilty of a class A misdemeanor. A provider is guilty of a class
13 A misdemeanor if the provider knowingly hires or retains a person
14 to have contact with patients or residents and:

15 (1) The person has been convicted of, pled guilty to, or
16 nolo contendere in this state or any other state or has been
17 found guilty of a crime, which if committed in Missouri would be:

18 (a) A felony stealing offense;

19 (b) Child abuse or neglect;

20 (c) A violation of subsection 3 of section 187.020;

21 (d) A felony violation of chapter 198, 334, 565, 566, 568,
22 569, or 573, RSMo;

23 (e) A violation of section 565.184, RSMo;

24 (f) A violation of section 568.020, RSMo; or

25 (g) A violation of section 570.145, RSMo; or

1 (2) The person or the person's foster care license has been
2 refused, suspended, or revoked pursuant to section 210.496, RSMo,
3 if such refusal, suspension, or revocation is related to care or
4 protection of children; or

5 (3) The person is disqualified for employment by the
6 department of mental health pursuant to section 630.170, RSMo.

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

13 8. Any provider that demonstrates a pattern of violation of
14 this section shall be subject to the civil penalties established
15 in section 197.455 or 198.067, RSMo, regardless of whether such
16 violations have been or are being corrected.

17 187.087. 1. Reports confidential pursuant to this section,
18 sections 187.020 to 187.034 and sections 187.050 and 187.080
19 shall not be deemed a public record and shall not be subject to
20 the provisions of section 109.180, RSMo, or chapter 610, RSMo.
21 The name of the complainant or any person mentioned in the
22 reports shall not be disclosed unless:

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

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

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

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

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

13 (6) Release of a name is requested by the division of
14 family services within the department of social services for the
15 purpose of licensure pursuant to chapter 210, RSMo.

16 2. The department shall, upon request, provide to the
17 division of employment security within the department of labor
18 and industrial relations copies of the investigative reports that
19 led to an employee being placed on the disqualification list;
20 except that copies of such reports shall not identify the
21 reporter or the eligible adult referenced in the report.

22 187.090. 1. The director or any person designated by the
23 director, may administer oaths and affirmations, subpoena
24 witnesses, compel their attendance, take testimony, require
25 answers to written interrogatories, and require production of any

1 books, papers, correspondence, memoranda, agreements, or other
2 documents or records which the director deems relevant and
3 material to any inspection or investigation. In the case of
4 contumacy by or refusal to obey a subpoena issued to any person,
5 the circuit court of any county of the state or the city of St.
6 Louis, upon application by the director or the director's
7 designee may issue to the person an order requiring such person
8 to appear before the department director, or the director's
9 designee, there to produce documentary evidence if so ordered or
10 to give testimony or evidence if so ordered or to answer
11 interrogatories touching upon the matter under investigation or
12 in questions in accordance with the forms and procedures
13 otherwise authorized by the Rules of Civil Procedure. The court
14 may make any order which justice requires to protect any person
15 from undue annoyance, embarrassment, expense, or oppression.
16 Failure to obey the order of the court may be punished by the
17 court as a contempt of court.

18 2. Failure to comply with any lawful request of the
19 department in connection with the investigation and inspection is
20 a ground for refusal to issue a license or contract, or for the
21 suspension or revocation of a license or contract.

22 187.100. 1. By July 1, 2003, the department shall
23 establish a telephone check-in pilot project in one area of the
24 state to be designated by the department. Such pilot project
25 shall require that a telephone check-in system be established for

1 in-home services employees, as defined in section 660.250, RSMo,
2 to accurately document the actual time that such employees spend
3 in clients' homes by requiring such employees to clock in and out
4 of the client's home by telephone. Such system shall also
5 require in-home services employees to thoroughly document the
6 specific services delivered to clients.

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

12 187.102. Pursuant to sections 187.010 to 187.102, the
13 department of health and senior services and the department of
14 mental health shall work cooperatively in the investigation of
15 abuse and neglect, when appropriate.

16 191.900. As used in sections 191.900 to 191.910, the
17 following terms mean:

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

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

25 (3) "False", wholly or partially untrue. A false statement

1 or false representation of a material fact means the failure to
2 reveal material facts in a manner which is intended to deceive a
3 health care payer with respect to a claim;

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

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

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

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

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

1 assistance program provided by section 208.151, RSMo, et seq.,
2 and any state agency or agencies administering all or any part of
3 such a program;

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

6 191.910. 1. The attorney general shall have authority to
7 investigate alleged or suspected violations of sections 191.900
8 to 191.910, or sections 187.020 to 187.028, RSMo, if related to a
9 violation of sections 191.900 to 191.910 and shall have all
10 powers provided by sections 407.040 to 407.090, RSMo, in
11 connection with investigations of alleged or suspected violations
12 of sections 191.900 to 191.910, or sections 187.020 to 187.028,
13 RSMo, if related to a violation of sections 191.900 to 191.910 as
14 if the acts enumerated in subsections 1 to 3 of section 191.905
15 are unlawful acts proscribed by chapter 407, RSMo, provided that
16 if the attorney general exercises such powers, the provisions of
17 section 407.070, RSMo, shall also be applicable; and may exercise
18 all of the powers provided by sections 542.271 to 542.296, RSMo,
19 in connection with investigations of alleged or suspected
20 violations of sections 191.900 to 191.910 or sections 187.020 to
21 187.028, RSMo, if related to a violation of sections 191.900 to
22 191.910; and may exercise all of the powers provided by
23 subsections 1 and 2 of section 578.387, RSMo, in connection with
24 investigations of alleged or suspected violations of sections
25 191.900 to 191.910, as if the acts enumerated in subsections 1 to

1 3 of section 191.905 involve "public assistance" as defined by
2 section 578.375, RSMo. The attorney general and [his] the
3 attorney general's authorized investigators shall be authorized
4 to serve all subpoenas, including investigative subpoenas, and
5 civil process related to the enforcement of sections 191.900 to
6 191.910, or sections 187.020 to 187.028, RSMo, if related to a
7 violation of sections 191.900 to 191.910 and chapter 407, RSMo.
8 [In order for the attorney general to commence a state
9 prosecution] For violations of sections 191.900 to 191.910, the
10 attorney general shall either commence a state prosecution or
11 prepare and forward a report of the violations to the appropriate
12 prosecuting attorney. Upon receiving a referral, the prosecuting
13 attorney shall either commence a prosecution based on the report
14 by the filing of a complaint, information, or indictment within
15 sixty days of receipt of said report or shall file a written
16 statement with the attorney general explaining why criminal
17 charges should not be brought. [This time period may be extended
18 by the prosecuting attorney with the agreement of the attorney
19 general for an additional sixty days.] If the prosecuting
20 attorney commences a criminal prosecution, the attorney general
21 or [his] the attorney general's designee shall be permitted by
22 the court to participate as a special assistant prosecuting
23 attorney in settlement negotiations and all court proceedings,
24 subject to the authority of the prosecuting attorney, for the
25 purpose of providing such assistance as may be necessary. If the

1 prosecuting attorney fails to commence a prosecution and fails to
2 file a written statement listing the reasons why criminal charges
3 should not be brought within the appropriate time period, or
4 declines to prosecute on the basis of inadequate office
5 resources, the attorney general [shall have authority to] may
6 commence prosecutions for violations of sections 191.900 to
7 191.910, or sections 187.020 to 187.028, RSMo, if related to a
8 violation of sections 191.900 to 191.910. In cases where a
9 defendant pursuant to a common scheme or plan has committed acts
10 which constitute or would constitute violations of sections
11 191.900 to 191.910, or sections 187.020 to 187.028, RSMo, if
12 related to a violation of sections 191.900 to 191.910 in more
13 than one state, the attorney general shall have the authority to
14 represent the state of Missouri in any plea agreement which
15 resolves all criminal prosecutions within and without the state,
16 and such agreement shall be binding on all state prosecutors.

17 2. In any investigation, hearing or other proceeding
18 pursuant to sections 191.900 to 191.910, or sections 187.020 to
19 187.028, RSMo, if related to a violation of sections 191.900 to
20 191.910 any record in the possession or control of a health care
21 provider, or in the possession or control of another person on
22 behalf of a health care provider, including but not limited to
23 any record relating to patient care, business or accounting
24 records, payroll records and tax records, whether written or in
25 an electronic format, shall be made available by the health care

1 provider to the attorney general or the court, and shall be
2 admissible into evidence, regardless of any statutory or common
3 law privilege which such health care provider, record custodian
4 or patient might otherwise invoke or assert. The provisions of
5 section 326.151, RSMo, shall not apply to actions brought
6 pursuant to sections 191.900 to 191.910. The attorney general
7 shall not disclose any record obtained pursuant to this section,
8 other than in connection with a proceeding instituted or pending
9 in any court or administrative agency. The access, provision,
10 use, and disclosure of records or material subject to the
11 provisions of 42 U.S.C. section 290dd-2 shall be subject to said
12 section, as may be amended from time to time, and to regulations
13 promulgated pursuant to said section.

14 3. Sections 191.900 to 191.910 shall not be construed to
15 prohibit or limit any other criminal or civil action against a
16 health care provider for the violation of any other law. Any
17 complaint, investigation or report received or completed pursuant
18 to sections [198.070 and] 187.020 to 187.028, RSMo, section
19 198.090, RSMo, subsection 2 of section 205.967, RSMo, sections
20 375.991 to 375.994, RSMo, section 578.387, RSMo, or [sections
21 660.300 and 660.305] section 187.050, RSMo, which indicates a
22 violation of sections 191.900 to 191.910, shall be referred to
23 the attorney general. A referral to the attorney general
24 pursuant to this subsection shall not preclude the agencies
25 charged with enforcing the foregoing sections from conducting

1 investigations, providing protective services or taking
2 administrative action regarding the complaint, investigation or
3 report referred to the attorney general, as may be provided by
4 such sections; provided that all material developed by the
5 attorney general in the course of an investigation pursuant to
6 sections 191.900 to 191.910 shall not be subject to subpoena,
7 discovery, or other legal or administrative process in the course
8 of any such administrative action. Sections 191.900 to 191.910
9 take precedence over the provisions of sections [198.070 and]
10 187.020 to 187.028, RSMo, section 198.090, RSMo, subsection 2 of
11 section 205.967, RSMo, sections 375.991 to 375.994, RSMo, section
12 578.387, RSMo, and [sections 660.300 and 660.305] section
13 187.050, RSMo, to the extent such provisions are inconsistent or
14 overlap.

15 197.310. 1. The "Missouri Health Facilities Review
16 Committee" is hereby established. [The agency shall provide
17 clerical and administrative support to the committee. The
18 committee may employ additional staff as it deems necessary.]
19 The department of health and senior services shall hire and
20 administratively supervise any clerical and administrative
21 support staff to the committee.

22 2. The committee shall be composed of:

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

25 (2) Two members of the house of representatives appointed

1 by the speaker, who shall be from different political parties;
2 and

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

6 3. No business of this committee shall be performed without
7 a majority of the full body.

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

17 5. The committee shall elect a chairman at its first
18 meeting which shall be called by the governor. The committee
19 shall meet upon the call of the chairman or the governor.

20 6. The committee shall review and approve or disapprove all
21 applications for a certificate of need made under sections
22 197.300 to 197.366. It shall issue reasonable rules and
23 regulations governing the submission, review and disposition of
24 applications.

25 7. Members of the committee shall serve without

1 compensation but shall be reimbursed for necessary expenses
2 incurred in the performance of their duties.

3 8. Notwithstanding the provisions of subsection 4 of
4 section 610.025, RSMo, the proceedings and records of the
5 facilities review committee shall be subject to the provisions of
6 chapter 610, RSMo.

7 197.317. 1. After July 1, 1983, no certificate of need
8 shall be issued for the following:

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

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

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

1 facilities operated exclusively for the mentally retarded to
2 intermediate care or skilled nursing facilities or beds.
3 However, after January 1, [2003] 2007, nothing in this section
4 shall prohibit the Missouri health facilities review committee
5 from issuing a certificate of need for additional beds in
6 existing health care facilities or for new beds in new health
7 care facilities or for the reallocation of licensed beds,
8 provided that no construction shall begin prior to [January 1,
9 2004] July 1, 2007. The provisions of subsections 16 and 17 of
10 section 197.315 shall apply to the provisions of this section.

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

16 197.318. 1. The provisions of section 197.317 shall not
17 apply to a residential care facility I, residential care facility
18 II, intermediate care facility or skilled nursing facility only
19 where the department of [social] health and senior services has
20 first determined that there presently exists a need for
21 additional beds of that classification because the average
22 occupancy of all licensed and available residential care facility
23 I, residential care facility II, intermediate care facility and
24 skilled nursing facility beds exceeds ninety percent for at least
25 four consecutive calendar quarters, in a particular county, and

1 within a fifteen-mile radius of the proposed facility, and the
2 facility otherwise appears to qualify for a certificate of need.
3 The department's certification that there is no need for
4 additional beds shall serve as the final determination and
5 decision of the committee. In determining ninety percent
6 occupancy, residential care facility I and II shall be one
7 separate classification and intermediate care and skilled nursing
8 facilities are another separate classification.

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

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

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

21 5. The provisions of section 197.317 shall not apply to any
22 facility where at least ninety-five percent of the patients
23 require diets meeting the dietary standards defined by section
24 196.165, RSMo.

25 6. The committee shall review all letters of intent and

1 applications for long-term care hospital beds meeting the
2 requirements described in 42 CFR, Section 412.23(e) under its
3 criteria and standards for long-term care beds.

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

10 8. Notwithstanding any other provision of this chapter to
11 the contrary:

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

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

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

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

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

23 (c) Has made an effort to purchase beds for eighteen months
24 following the date the letter of intent to expand is submitted
25 pursuant to paragraph (a) of this subdivision. For purposes of

1 this paragraph, an "effort to purchase" means a copy certified by
2 the offeror as an offer to purchase beds from another licensed
3 facility in the same licensure category; and

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

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

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

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

23 c. A facility adding beds pursuant to subparagraphs a. or
24 b. of this paragraph shall not expand by more than fifty percent
25 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 health and senior services as licensed and available for purposes
10 of this section;

11 (4) Any residential care facility licensed pursuant to
12 chapter 198, RSMo, may relocate any portion of such facility's
13 current licensed beds to any other facility to be licensed within
14 the same licensure category if both facilities are under the same
15 licensure ownership or control, and are located within six miles
16 of each other;

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

24 9. Any existing licensed and operating health care facility
25 offering long-term care services may replace one-half of its

1 licensed beds at the same site or a site not more than thirty
2 miles from its current location if, for at least the most recent
3 four consecutive calendar quarters, the facility operates only
4 fifty percent of its then licensed capacity with every resident
5 residing in a private room. In such case:

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

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

12 (3) The existing facility and proposed facility shall have
13 the same owner or owners, regardless of corporate or business
14 structure, and such owner or owners shall stipulate in writing
15 that the existing facility beds to be replaced will not later be
16 used to provide long-term care services. If the facility is
17 being operated under a lease, both the lessee and the owner of
18 the existing facility shall stipulate the same in writing.

19 10. Nothing in this section shall prohibit a health care
20 facility licensed pursuant to chapter 198, RSMo, from being
21 replaced in its entirety within fifteen miles of its existing
22 site so long as the existing facility and proposed or replacement
23 facility have the same owner or owners regardless of corporate or
24 business structure and the health care facility being replaced
25 remains unlicensed and unused for any long-term care services

1 whether they do or do not require a license from the date of
2 licensure of the replacement facility.

3 197.340. 1. Any health facility providing a health service
4 must notify the committee of any discontinuance of any previously
5 provided health care service, a decrease in the number of
6 licensed beds by ten percent or more, or the change in licensure
7 category for any such facility.

8 2. Any health facility providing a health service shall
9 notify the committee annually of the number of licensed beds that
10 are unavailable. Beginning January 1, 2003, the committee shall
11 collect for deposit in the general revenue fund an annual
12 surcharge of one thousand dollars for each licensed but
13 unavailable bed for health facilities licensed pursuant to
14 chapter 198, RSMo.

15 197.370. 1. As used in this section, the term "continuing
16 care retirement community" means:

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

24 (a) "Independent living", a building or buildings or any
25 group housing and services program, other than a skilled nursing

1 facility, intermediate care facility, or residential care
2 facility I or II for three or more unrelated adults that promotes
3 resident self-direction and participation in decisions that
4 emphasize choice, dignity, privacy, individuality, independence
5 and home-like surroundings;

6 (b) "Intermediate care facility", as defined in section
7 198.006, RSMo;

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

10 (d) "Skilled nursing care facility", as defined in section
11 198.006, RSMo; and

12 (2) Independent living services provided through contracts
13 which provide for such services for one year or more and may
14 include entrance or endowment fees in addition to monthly
15 charges.

16 2. Communities which consist of or will when completed
17 consist of a minimum of fifty independent units and a minimum of
18 either thirty residential care facility beds or thirty nursing
19 beds shall be exempt from the requirements of section 197.317,
20 RSMo, for the establishment or addition of long-term care beds,
21 including the establishment or addition of residential care beds,
22 intermediate care beds, and skilled nursing beds to campuses that
23 meet the definition of continuing care retirement community upon
24 completion.

25 3. Any licensed facility as defined in section 198.006,

1 RSMo, which has been licensed for more than three years and has
2 failed to achieve an occupancy level for the last six quarters of
3 fifty-five percent or higher, shall relinquish to the certificate
4 of need program the excess beds over sixty-five percent of
5 licensed beds. The facility may regain these beds after
6 obtaining a ninety percent occupancy on the remaining beds for
7 six consecutive quarters. For purposes of this section, periods
8 of major renovation affecting bed availability shall not be
9 counted in the six quarters.

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

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

14 (2) Change the licensure category of beds and relocate them
15 to any other continuing care retirement community with mutual
16 ownership.

17 197.455. [The department may file an action in the circuit
18 court for the county in which any home health agency alleged to
19 be violating the provisions of sections 197.400 to 197.475
20 resides or may be found for an injunction to restrain the home
21 health agency from continuing the violation.] An action may be
22 brought by the department, or by the attorney general on his or
23 her own volition or at the request of the department or any other
24 appropriate state agency, to temporarily or permanently enjoin or
25 restrain any violation of sections 197.400 to 197.477, to enjoin

1 the acceptance of new clients until substantial compliance with
2 sections 197.400 to 197.477 is achieved, or to enjoin any
3 specific action or practice of the agency. Such action shall be
4 brought in the circuit court for the county in which the agency
5 is located. Any action brought pursuant to the provisions of
6 this section shall be placed at the head of the docket by the
7 court, and the court shall hold a hearing on any action brought
8 pursuant to the provisions of this section no less than fifteen
9 days after the filing of the action.

10 198.006. As used in sections 198.003 to 198.186, unless the
11 context clearly indicates otherwise, the following terms mean:

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

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

19 (3) "Affiliate":

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

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

24 (c) With respect to a corporation, each person who owns,
25 holds or has the power to vote, five percent or more of any class

1 of securities issued by the corporation, and each officer and
2 director;

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

5 (4) "Department", the Missouri department of [social]
6 health and senior services;

7 (5) "Dementia", a deterioration of intellectual function
8 and other cognitive skills leading to a decline in the ability to
9 perform activities of daily living;

10 (6) "Direct care", the provision of nursing care or
11 assistance with feeding, dressing, movement, bathing, or other
12 personal needs;

13 (7) "Emergency", a situation, physical condition or one or
14 more practices, methods or operations which presents imminent
15 danger of death or serious physical or mental harm to residents
16 of a facility;

17 [(6)] (8) "Facility", any residential care facility I,
18 residential care facility II, [immediate] intermediate care
19 facility, or skilled nursing facility;

20 [(7)] (9) "Health care provider", any person providing
21 health care services or goods to residents and who receives funds
22 in payment for such goods or services under Medicaid;

23 [(8)] (10) "Intermediate care facility", any premises,
24 other than a residential care facility I, residential care
25 facility II, or skilled nursing facility, which is utilized by

1 its owner, operator, or manager to provide twenty-four hour
2 accommodation, board, personal care, and basic health and nursing
3 care services under the daily supervision of a licensed nurse and
4 under the direction of a licensed physician to three or more
5 residents dependent for care and supervision and who are not
6 related within the fourth degree of consanguinity or affinity to
7 the owner, operator or manager of the facility;

8 [(9)] (11) "Manager", any person other than the
9 administrator of a facility who contracts or otherwise agrees
10 with an owner or operator to supervise the general operation of a
11 facility, providing such services as hiring and training
12 personnel, purchasing supplies, keeping financial records, and
13 making reports;

14 [(10)] (12) "Medicaid", medical assistance under section
15 208.151, RSMo, et seq., in compliance with Title XIX, Public Law
16 89-97, 1965 amendments to the Social Security Act (42 U.S.C. 301
17 et seq.), as amended;

18 [(11)] (13) "Neglect", the failure to provide, by those
19 responsible for the care, custody, and control of a resident in a
20 facility, the services which are reasonable and necessary to
21 maintain the physical and mental health of the resident, when
22 such failure presents either an imminent danger to the health,
23 safety or welfare of the resident or a substantial probability
24 that death or serious physical harm would result;

25 [(12)] (14) "Operator", any person licensed or required to

1 be licensed under the provisions of sections 198.003 to 198.096
2 in order to establish, conduct or maintain a facility;

3 [(13)] (15) "Owner", any person who owns an interest of
4 five percent or more in:

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

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

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

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

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

17 [(14)] (16) "Resident", a person who by reason of aging,
18 illness, disease, or physical or mental infirmity receives or
19 requires care and services furnished by a facility and who
20 resides or boards in or is otherwise kept, cared for, treated or
21 accommodated in such facility for a period exceeding twenty-four
22 consecutive hours;

23 [(15)] (17) "Residential care facility I", any premises,
24 other than a residential care facility II, intermediate care

1 facility, or skilled nursing facility, which is utilized by its
2 owner, operator or manager to provide twenty-four hour care to
3 three or more residents, who are not related within the fourth
4 degree of consanguinity or affinity to the owner, operator, or
5 manager of the facility and who need or are provided with
6 shelter, board, and with protective oversight, which may include
7 storage and distribution or administration of medications and
8 care during short-term illness or recuperation;

9 [(16)] (18) "Residential care facility II", any premises,
10 other than a residential care facility I, an intermediate care
11 facility, or a skilled nursing facility, which is utilized by its
12 owner, operator or manager to provide twenty-four hour
13 accommodation, board, and care to three or more residents who are
14 not related within the fourth degree of consanguinity or affinity
15 to the owner, operator, or manager of the facility, and who need
16 or are provided with supervision of diets, assistance in personal
17 care, storage and distribution or administration of medications,
18 supervision of health care under the direction of a licensed
19 physician, and protective oversight, including care during
20 short-term illness or recuperation;

21 [(17)] (19) "Skilled nursing facility", any premises, other
22 than a residential care facility I, a residential care facility
23 II, or an intermediate care facility, which is utilized by its
24 owner, operator or manager to provide for twenty-four hour
25 accommodation, board and skilled nursing care and treatment

1 services to at least three residents who are not related within
2 the fourth degree of consanguinity or affinity to the owner,
3 operator or manager of the facility. Skilled nursing care and
4 treatment services are those services commonly performed by or
5 under the supervision of a registered professional nurse for
6 individuals requiring twenty-four hours a day care by licensed
7 nursing personnel including acts of observation, care and counsel
8 of the aged, ill, injured or infirm, the administration of
9 medications and treatments as prescribed by a licensed physician
10 or dentist, and other nursing functions requiring substantial
11 specialized judgment and skill;

12 [(18)] (20) "Vendor", any person selling goods or services
13 to a health care provider.

14 198.012. 1. The provisions of section 187.020, RSMo, and
15 sections 198.003 to 198.136 shall not apply to any of the
16 following entities:

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

19 (2) Any facility or other entity otherwise licensed by the
20 state and operating exclusively under such license and within the
21 limits of such license, unless the activities and services are or
22 are held out as being activities or services normally provided by
23 a licensed facility [under] pursuant to section 187.010, RSMo,
24 and sections 198.003 to 198.186, 198.200, 208.030, and 208.159,
25 RSMo, except hospitals licensed [under] pursuant to the

1 provisions of chapter 197, RSMo;

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

16 (4) Any facility licensed pursuant to sections 630.705 to
17 630.760, RSMo, which provides care, treatment, habilitation and
18 rehabilitation exclusively to persons who have a primary
19 diagnosis of mental disorder, mental illness, mental retardation
20 or developmental disabilities, as defined in section 630.005,
21 RSMo;

22 (5) Any provider of care under a life care contract, except
23 to any portion of the provider's premises on which the provider
24 offers services provided by an intermediate care facility or
25 skilled nursing facility as defined in section 198.006. For the

1 purposes of this section, "provider of care under a life care
2 contract" means any person contracting with any individual to
3 furnish specified care and treatment to the individual for the
4 life of the individual, with significant prepayment for such care
5 and treatment.

6 2. Nothing in this section shall prohibit any of these
7 entities from applying for a license [under] pursuant to sections
8 198.003 to 198.136.

9 198.019. When the department of health and senior services
10 issues a license for or renews the existing license of a
11 facility, the department of health and senior services shall:

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

19 (2) Determine and consider the compliance history of the
20 facilities listed in the application pursuant to subdivision (1)
21 of this section as facilities for which the owners and operators
22 have or have had a financial interest. The department, based on
23 the review of such compliance history, may deny licensure or
24 renewal of licensure for the facility;

25 (3) Consider the compliance history of the operator of the

1 facility and the facility for which licensure or renewal of
2 licensure is sought. The department, based on the review of such
3 compliance history, may deny licensure or renewal of licensure
4 for the facility; and

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

7 198.022. 1. Upon receipt of an application for a license
8 to operate a facility, the department shall review the
9 application, investigate the applicant and the statements sworn
10 to in the application for license and conduct any necessary
11 inspections. A license shall be issued if the following
12 requirements are met:

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

14 (2) The facility and the operator are in substantial
15 compliance with the provisions of sections 198.003 to 198.096 and
16 the standards established thereunder;

17 (3) The applicant has the financial capacity to operate the
18 facility;

19 (4) The administrator of a residential care facility II, a
20 skilled nursing facility, or an intermediate care facility is
21 currently licensed under the provisions of chapter 344, RSMo;

22 (5) Neither the operator nor any principals in the
23 operation of the facility have ever been convicted of a felony
24 offense concerning the operation of a long-term health care
25 facility or other health care facility or ever knowingly acted or

1 knowingly failed to perform any duty which materially and
2 adversely affected the health, safety, welfare or property of a
3 resident, while acting in a management capacity. The operator of
4 the facility or any principal in the operation of the facility
5 shall not be under exclusion from participation in the title
6 XVIII (Medicare) or title XIX (Medicaid) program of any state or
7 territory;

8 (6) Neither the operator nor any principals involved in the
9 operation of the facility have ever been convicted of a felony in
10 any state or federal court arising out of conduct involving
11 either management of a long-term care facility or the provision
12 or receipt of health care;

13 (7) All fees due to the state have been paid.

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

17 3. The department may inspect any facility and any records
18 and may make copies of records, at the facility, at the
19 department's own expense, required to be maintained by sections
20 198.003 to 198.096 or by the rules and regulations promulgated
21 thereunder at any time if a license has been issued to or an
22 application for a license has been filed by the operator of such
23 facility. Except as otherwise provided for in section 198.526,
24 the department shall make at least two inspections per year, at
25 least one of which shall be unannounced to the operator. The

1 department may make such other inspections, announced or
2 unannounced, as it deems necessary to carry out the provisions of
3 sections 198.003 to 198.136.

4 4. Whenever the department has reasonable grounds to
5 believe that a facility required to be licensed under sections
6 198.003 to 198.096 is operating without a license, and the
7 department is not permitted access to inspect the facility, or
8 when a licensed operator refuses to permit access to the
9 department to inspect the facility, the department shall apply to
10 the circuit court of the county in which the premises is located
11 for an order authorizing entry for such inspection, and the court
12 shall issue the order if it finds reasonable grounds for
13 inspection or if it finds that a licensed operator has refused to
14 permit the department access to inspect the facility.

15 198.026. 1. Whenever a duly authorized representative of
16 the department finds upon an inspection of a facility that it is
17 not in compliance with the provisions of sections 198.003 to
18 198.096 and the standards established thereunder, the operator or
19 administrator shall be informed of the deficiencies in an exit
20 interview conducted with the operator or administrator or his
21 designee. The department shall inform the operator or
22 administrator, in writing, of any violation of a class I standard
23 at the time the determination is made. A written report shall be
24 prepared of any deficiency for which there has not been prompt
25 remedial action, and a copy of such report and a written

1 correction order shall be sent to the operator or administrator
2 by certified mail or other delivery service that provides a dated
3 receipt of delivery at the facility address within ten working
4 days after the inspection, stating separately each deficiency and
5 the specific statute or regulation violated.

6 2. The operator or administrator shall have five working
7 days following receipt of a written report and correction order
8 regarding a violation of a class I standard and ten working days
9 following receipt of the report and correction order regarding
10 violations of class II or class III standards to request any
11 conference and to submit a plan of correction for the
12 department's approval which contains specific dates for achieving
13 compliance. Within five working days after receiving a plan of
14 correction regarding a violation of a class I standard and within
15 ten working days after receiving a plan of correction regarding a
16 violation of a class II or III standard, the department shall
17 give its written approval or rejection of the plan. If there was
18 a violation of any class I standard, immediate corrective action
19 shall be taken by the operator or administrator and a written
20 plan of correction shall be submitted to the department. The
21 department shall give its written approval or rejection of the
22 plan and if the plan is acceptable, a reinspection shall be
23 conducted within twenty calendar days of the exit interview to
24 determine if deficiencies have been corrected. If there was a
25 violation of any class II standard and the plan of correction is

1 acceptable, an unannounced reinspection shall be conducted
2 between forty and ninety calendar days from the date of the exit
3 conference to determine the status of all previously cited
4 deficiencies. If there was a violation of class III standards
5 sufficient to establish that the facility was not in substantial
6 compliance, an unannounced reinspection shall be conducted within
7 one hundred twenty days of the exit interview to determine the
8 status of previously identified deficiencies.

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

18 4. If, following the reinspection, the facility is found
19 not in substantial compliance with sections 198.003 to 198.096
20 and the standards established thereunder or the operator is not
21 correcting the noncompliance in accordance with the approved plan
22 of correction, the department shall issue a notice of
23 noncompliance, which shall be sent by certified mail or other
24 delivery service that provides a dated receipt of delivery to
25 each person disclosed to be an owner or operator of the facility,

1 according to the most recent information or documents on file
2 with the department.

3 [4.] 5. The notice of noncompliance shall inform the
4 operator or administrator that the department may seek the
5 imposition of any of the sanctions and remedies provided for in
6 section 198.067, or any other action authorized by law.

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

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

23 198.029. The provisions of section 198.026 notwithstanding,
24 whenever a duly authorized representative of the department finds
25 upon inspection of a licensed facility, and the director of the

1 department finds upon review, that the facility or the operator
2 is not in substantial compliance with a standard or standards the
3 violations of which would present either an imminent danger to
4 the health, safety or welfare of any resident or a substantial
5 probability that death or serious physical harm would result and
6 which is not immediately corrected, the department shall:

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

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

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

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

25 198.032. 1. Nothing contained in sections 187.020 to

1 187.050, RSMo, and sections 198.003 to 198.186 shall permit the
2 public disclosure by the department of confidential medical,
3 social, personal or financial records of any resident in any
4 facility, except when disclosed in a manner which does not
5 identify any resident, or when ordered to do so by a court of
6 competent jurisdiction. Such records shall be accessible without
7 court order for examination and copying only to the following
8 persons or offices, or to their designees:

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

11 (2) The attorney general;

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

14 (4) Any appropriate law enforcement agency;

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

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

21 2. Inspection reports and written reports of investigations
22 of complaints, of substantiated reports of abuse and neglect
23 received in accordance with [section 198.070] sections 187.020 to
24 187.028, RSMo, and complaints received by the department relating
25 to the quality of care of facility residents, shall be accessible

1 to the public for examination and copying, provided that such
2 reports are disclosed in a manner which does not identify the
3 complainant or any particular resident. Records and reports
4 shall clearly show what steps the department and the institution
5 are taking to resolve problems indicated in said inspections,
6 reports and complaints.

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

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

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

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

1 within a twenty-four month period; [or]

2 (2) Failed or refused to comply with class III standards as
3 established by the department pursuant to section 198.085, where
4 the aggregate effect of such noncompliances presents either an
5 imminent danger to the health, safety or welfare of any resident
6 or a substantial probability that death or serious physical harm
7 would result or where the operator was cited for failure to
8 comply with a particular class II or III standard on two
9 different occasions within a twelve month period;

10 [(2)] (3) Refused to allow representatives of the
11 department to inspect the facility for compliance with standards;

12 [(3)] (4) Knowingly acted or knowingly omitted any duty in
13 a manner which would materially and adversely affect the health,
14 safety, welfare or property of a resident; or

15 [(4)] (5) Demonstrated financial incapacity to operate and
16 conduct the facility in accordance with the provisions of
17 sections 198.003 to 198.096.

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

1 198.039. 1. Any person aggrieved by an official action of
2 the department either refusing to issue a license or revoking a
3 license may seek a determination thereon by the administrative
4 hearing commission pursuant to the provisions of section 621.045,
5 RSMo, et seq., except that the petition must be filed with the
6 administrative hearing commission within fifteen days after the
7 mailing or delivery of notice to the operator. It shall not be a
8 condition to such determination that the person aggrieved seek a
9 reconsideration, a rehearing or exhaust any other procedure
10 within the department.

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

1 in which the department has refused to issue a license, the
2 commission shall have no authority to stay or to require the
3 issuance of a license pending final determination by the
4 commission.

5 3. The administrative hearing commission shall make the
6 final decision as to the issuance or revocation of a license
7 based upon the circumstances and conditions as they existed at
8 the time of the alleged deficiencies and not based upon
9 circumstances and conditions after the time of the decision not
10 to issue or revoke a license. Any person aggrieved by a final
11 decision of the administrative hearing commission, including the
12 department, may seek judicial review of such decision by filing a
13 petition for review in the court of appeals for the district in
14 which the facility is located. Review shall be had, except as
15 modified herein, in accordance with the provisions of sections
16 621.189 and 621.193, RSMo.

17 198.067. 1. An action may be brought by the department, or
18 by the attorney general on his or her own volition or at the
19 request of the department or any other appropriate state agency,
20 to temporarily or permanently enjoin or restrain any violation of
21 sections 198.003 to 198.096, to enjoin the acceptance of new
22 residents until substantial compliance with sections 198.003 to
23 198.096 is achieved, or to enjoin any specific action or practice
24 of the facility. Any action brought pursuant to the provisions
25 of this section shall be placed at the head of the docket by the

1 court, and the court shall hold a hearing on any action brought
2 pursuant to the provisions of this section no [less] later than
3 fifteen days after the filing of the action.

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

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

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

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

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

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

9 (5) For each specific class I violation by the same
10 operator which has been cited previously within the past
11 twenty-four months and for each specific class II or III
12 violation by the same operator which has been cited previously
13 within the past twelve months, double the amount last imposed.

14 As used in this [subdivision] subsection the term "violation"
15 shall mean a breach of a specific state or federal standard or
16 statute which remains uncorrected and not in accord with the
17 accepted plan of correction at the time of the reinspection
18 conducted pursuant to subsection 3 of section 198.026 or the
19 regulations established pursuant to Title 42 of the United States
20 Code. A judgment rendered against the operator of a facility
21 pursuant to this subsection shall bear interest as provided in
22 subsection 1 of section 408.040, RSMo.

23 4. Any individual who willfully and knowingly certifies
24 pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42

1 of the United States Code a material and false statement in a
2 resident assessment is subject to a civil penalty of not more
3 than one thousand dollars with respect to each assessment. Any
4 individual who willfully and knowingly causes another individual
5 to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r
6 of Title 42 of the United States Code a material and false
7 statement in a resident assessment is subject to a civil penalty
8 of not more than five thousand dollars with respect to each
9 assessment.

10 5. The imposition of any remedy provided for in sections
11 198.003 to 198.186 shall not bar the imposition of any other
12 remedy.

13 6. Penalties collected pursuant to this section shall be
14 deposited in the [division of aging] elderly home-delivered meals
15 trust fund as established in section 660.078, RSMo. Such
16 penalties shall not be considered a charitable contribution for
17 tax purposes.

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

21 8. The licensed operator of a facility against whom an
22 action to recover a civil penalty is brought pursuant to this
23 section may confess judgment as provided in section 511.070,
24 RSMo, at any time prior to hearing. If such licensed operator
25 agrees to confess judgment, the amount of the civil penalty

1 recommended by the moving party in its petition shall be reduced
2 by twenty-five percent and the confessed judgment shall be
3 entered by the circuit court at the reduced amount.

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

11 10. In addition to the civil penalties specified in
12 subdivision (1) of subsection 3 of this section, any facility
13 which is cited with a violation of a class I standard pursuant to
14 subsection 1 of section 198.085, when such violation results in
15 serious physical injury or abuse of a sexual nature pursuant to
16 subdivision (1) of section 198.006, to any resident of that
17 facility shall be liable to the state for a civil penalty of one
18 hundred dollars multiplied by the number of beds licensed to the
19 facility, up to a maximum of ten thousand dollars pursuant to
20 subsections 1 and 2 of this section. The liability of the
21 facility for civil penalties pursuant to this section shall be
22 incurred immediately upon the citation of the violation and shall
23 not be affected by any subsequent correction of the violation.
24 For the purposes of this section, "serious physical injury" means
25 physical injury that creates a substantial risk of death or that

1 causes serious disfigurement or protracted loss or impairment of
2 the function of any part of the body.

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

9 198.073. 1. [Except as provided in subsection 3 of this
10 section, a residential care facility II or residential care
11 facility I shall admit or retain only those persons who are
12 capable mentally and physically of negotiating a normal path to
13 safety using assistive devices or aids when necessary, and who
14 may need assisted personal care within the limitations of such
15 facilities, and who do not require hospitalization or skilled
16 nursing care.] An individual may be accepted for residency in a
17 residential care facility I or residential care facility II or
18 remain in residence if the facility:

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

21 (2) Has staff appropriate in numbers and with appropriate
22 skills to provide such services; and

23 (3) Has a written plan, approved by the local fire
24 department, for the protection of all residents in the event of
25 disasters. Such plan may include keeping residents in place,

1 evacuating residents to areas of refuge, evacuating residents
2 from the building when necessary, or other methods of protection
3 based on the emergency and the individual building design; and

4 (4) Has written verification signed by the resident, or a
5 family member or legal representative of the resident, the
6 resident's physician and the facility representative stating how
7 the facility will meet the scheduled and unscheduled needs of the
8 resident; and

9 (5) Is staffed twenty-four hours a day by the appropriate
10 number and type of personnel for the proper care of residents and
11 upkeep of the facility.

12 2. Notwithstanding the provisions of subsection 3 of this
13 section, those persons previously qualified for residence who may
14 have a temporary period of incapacity due to illness, surgery, or
15 injury, which period does not exceed forty-five days, may be
16 allowed to remain in a residential care facility II or
17 residential care facility I if approved by a physician.

18 3. A residential care facility II may admit or continue to
19 care for [those persons who are physically capable of negotiating
20 a normal path to safety using assistive devices or aids when
21 necessary but are mentally incapable of negotiating such a path
22 to safety that have been diagnosed with Alzheimer's disease or
23 Alzheimer's related dementia] individuals with dementia who
24 require assistance in order to evacuate in the event of a
25 disaster, if the following requirements are met:

1 (1) [A family member or legal representative of the
2 resident, in consultation with the resident's primary physician
3 and the facility, determines that the facility can meet the needs
4 of the resident. The facility shall document the decision
5 regarding continued placement in the facility through written
6 verification by the family member, physician and the facility
7 representative;

8 (2)] The facility is equipped with an automatic sprinkler
9 system, in compliance with National Fire Protection Association
10 Code 13 or National Fire Protection Association Code 13R, and an
11 automated fire door system and smoke alarms in compliance with
12 13-3.4 of the [1997] 2000 Life Safety Codes for Existing Health
13 Care Occupancy;

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

17 (4)] (2) The facility shall take necessary measures to
18 provide residents with the opportunity to explore the facility
19 and, if appropriate, its grounds;

20 [(5) The facility shall be staffed twenty-four hours a day
21 by the appropriate number and type of personnel necessary for the
22 proper care of residents and upkeep of the facility. In meeting
23 such] (3) In meeting staffing requirements, every resident [who
24 is mentally incapable of negotiating a pathway to safety] with
25 dementia who requires assistance in order to evacuate in the

1 event of a disaster shall count as three residents. All on-duty
2 staff of the facility shall, at all times, be awake, dressed and
3 prepared to assist residents in case of emergency;

4 [(6)] (4) Every resident [mentally incapable of negotiating
5 a pathway to safety in the facility] with dementia who requires
6 assistance in order to evacuate in the event of disaster shall be
7 assessed by a licensed professional, as defined in sections
8 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337,
9 RSMo, with an assessment [instrument utilized by the division of
10 aging known as the minimum data set used for assessing residents
11 of skilled nursing facilities] tool for community-based services
12 for persons with dementia determined by the department:

13 (a) Upon admission;

14 (b) At least semiannually; and

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

17 [(7)] (5) Based on the assessment in subdivision [(6)] (4)
18 of this subsection, a licensed professional, as defined in
19 sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter
20 337, RSMo, shall develop an individualized service plan for every
21 resident [who is mentally incapable of negotiating a pathway to
22 safety] with dementia who requires assistance in order to
23 evacuate in the event of disaster. Such individualized service
24 plan shall be implemented by the facility's staff to meet the
25 specific needs of the resident;

1 [(8)] (6) Every facility shall use a personal electronic
2 monitoring device for any resident whose physician recommends the
3 use of such device;

4 [(9) All facility personnel who will provide direct care to
5 residents who are mentally incapable of negotiating a pathway to
6 safety shall receive at least twenty-four hours of training
7 within the first thirty days of employment. At least twelve
8 hours of such training shall be classroom instruction, with six
9 classroom instruction hours and two on-the-job training hours
10 related to the special needs, care and safety of residents with
11 dementia;

12 [(10) All personnel of the facility, regardless of whether
13 such personnel provides direct care to residents who cannot
14 negotiate a pathway to safety, shall receive on a quarterly basis
15 at least four hours of in- service training, with at least two
16 such hours relating to the care and safety of residents who are
17 mentally incapable of negotiating a pathway to safety;

18 [(11)] (7) The facility shall comply with the training
19 requirements pursuant to subdivisions (1) and (2) of subsection 8
20 of section 660.050, RSMo;

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

25 [(12)] (9) Every facility shall develop and implement a

1 plan to protect the rights, privacy and safety of all residents
2 and to prevent the financial exploitation of all residents. [; and

3 (13) A licensee of any licensed residential care facility
4 or any residential care facility shall ensure that its facility
5 does not accept or retain a resident who is mentally incapable of
6 negotiating a normal pathway to safety using assistive devices
7 and aids that:

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

10 (b) Is at constant risk of elopement;

11 (c) Requires physical restraint;

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

14 a. "Chemical restraint", a psychopharmacologic drug that is
15 used for discipline or convenience and not required to treat
16 medical symptoms;

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

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

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

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

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

6 4. The facility shall not care for any person unless such
7 facility is able to provide appropriate services for and meet the
8 needs of such person.

9 5.] 4. Nothing in this chapter shall prevent a facility
10 from discharging a resident who is a danger to himself or
11 herself, or to others.

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

16 7. The division of aging] 5. The department shall
17 promulgate rules to ensure compliance with this section and to
18 sanction facilities that fail to comply with this section. Any
19 rule or portion of a rule, as that term is defined in section
20 536.010, RSMo, that is created under the authority delegated in
21 this section shall become effective only if it complies with and
22 is subject to all of the provisions of chapter 536, RSMo, and, if
23 applicable, section 536.028, RSMo. This section and chapter 536,
24 RSMo, are nonseverable and if any of the powers vested with the
25 general assembly pursuant to chapter 536, RSMo, to review, to

1 delay the effective date or to disapprove and annul a rule are
2 subsequently held unconstitutional, then the grant of rulemaking
3 authority and any rule proposed or adopted after August 28, 1999,
4 shall be invalid and void.

5 198.080. [The division of aging shall develop flexible
6 assessment procedures for individuals in long-term care and those
7 considering long-term care services which follow the individual
8 through the continuum of care, including periodic reassessment.
9 By January 1, 2002, the division of aging shall promulgate rules
10 and regulations to implement the new assessment system and shall
11 make a report to the appropriate house and senate committees of
12 the general assembly regarding the new assessment system. Any
13 rule or portion of a rule, as that term is defined in section
14 536.010, RSMo, that is created under the authority delegated in
15 this section shall become effective only if it complies with and
16 is subject to all of the provisions of chapter 536, RSMo, and, if
17 applicable, section 536.028, RSMo. This section and chapter 536,
18 RSMo, are nonseverable and if any of the powers vested with the
19 general assembly pursuant to chapter 536, RSMo, to review, to
20 delay the effective date or to disapprove and annul a rule are
21 subsequently held unconstitutional, then the grant of rulemaking
22 authority and any rule proposed or adopted after August 28, 1999,
23 shall be invalid and void.] The departments of health and senior
24 services, social services, mental health, and elementary and
25 secondary education shall work together to compare and evaluate

1 their assessment procedures for individuals receiving long-term
2 care services and those individuals considering long-term care
3 services. Assessment procedures that are used for eligibility,
4 care needs determination, placement, and funding of care shall be
5 compared and evaluated. Following such evaluation, the
6 departments shall work together to make changes in the
7 assessments procedures utilized by each department to provide
8 uniformity and equity of services so the care needs of
9 individuals are met regardless of the program or department
10 providing services and funding. The assessment of individuals
11 with long-term care needs shall include, but is not limited to,
12 the following:

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

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

18 (3) An evaluation of the individual's support system in the
19 community that could enable the individual to live in a community
20 setting instead of an institution if the individual desires to be
21 in a community setting; and

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

24 198.082. 1. Each nursing assistant hired to work in a
25 skilled nursing or intermediate care facility after January 1,

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

19 2. As used in this section the term "nursing assistant"
20 means an employee, including a nurse's aide or an orderly, who is
21 assigned by a skilled nursing or intermediate care facility to
22 provide or assist in the provision of direct resident health care
23 services under the supervision of a nurse licensed under the
24 nursing practice law, chapter 335, RSMo. This section shall not
25 apply to any person otherwise licensed to perform health care

1 services under the laws of this state. It shall not apply to
2 volunteers or to members of religious or fraternal orders which
3 operate and administer the facility, if such volunteers or
4 members work without compensation.

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

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

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

24 4. Nursing assistants who have not successfully completed
25 the nursing assistant training program prior to employment may

1 begin duties as a nursing assistant only after completing an
2 initial twelve hours of basic orientation approved by the
3 department and may provide direct resident care only if under the
4 general supervision of a licensed nurse prior to completion of
5 the seventy-five classroom hours of the training program.

6 198.085. In establishing standards for each type of
7 facility, the department shall classify the standards into three
8 categories for each type of licensed facility as follows:

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

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

16 (b) Class I harm violations which are violations of class I
17 standards that have resulted in serious physical harm to a
18 resident; and

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

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

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

4 198.086. 1. The [division of aging] department of health
5 and senior services shall develop and implement a demonstration
6 project designed to establish a licensure category for health
7 care facilities that wish to provide treatment to persons with
8 Alzheimer's disease or Alzheimer's related dementia. The
9 division shall also:

10 (1) Inform potential providers of the demonstration project
11 and seek letters of intent;

12 (2) Review letters of intent and select provider
13 organizations to participate in the demonstration project. Ten
14 such organizations may develop such projects using an existing
15 license and additional organizations shall be newly licensed
16 facilities with no more than thirty beds per project. One
17 demonstration project shall be at a stand-alone facility of no
18 more than one hundred twenty beds designed and operated
19 exclusively for the care of residents with Alzheimer's disease or
20 dementia within a county of the first classification with a
21 charter form of government with a population over nine hundred
22 thousand. A total of not more than three hundred beds may be
23 newly licensed through the demonstration projects. All projects
24 shall maintain their pilot status until a complete evaluation is
25 completed by the [division of aging] department, in conjunction

1 with a qualified Missouri school or university, and a written
2 determination is made from such evaluation that the pilot project
3 is successful;

4 (3) Monitor the participants' compliance with the criteria
5 established in this section;

6 (4) Recommend legislation regarding the licensure of
7 dementia-specific residential care based on the results of the
8 demonstration project; and

9 (5) Submit a report regarding the [division's] department's
10 activities and recommendations for administrative or legislative
11 action on or before November fifteenth of each year to the
12 governor, the president pro tem of the senate and the speaker of
13 the house of representatives.

14 2. The director of the [division of aging] department of
15 health and senior services shall:

16 (1) Develop a reimbursement methodology to reasonably and
17 adequately compensate the pilot projects for the costs of
18 operation of the project, and require the filing of annual cost
19 reports by each participating facility which shall include, but
20 not be limited to, the cost equivalent of unpaid volunteer or
21 donated labor;

22 (2) Process the license applications of project
23 participants;

24 (3) Monitor each participant to assure its compliance with
25 the requirements and that the life, health and safety of

1 residents are assured;

2 (4) Require each participating facility to complete a
3 minimum data set form for each resident occupying a pilot bed;

4 (5) Require the [division of aging] department to assign a
5 single team of the same surveyors to inspect and survey all
6 participating facilities at least twice a year for the entire
7 period of the project; and

8 (6) Submit to the president pro tem of the senate and
9 speaker of the house of representatives copies of any statements
10 of deficiencies, plans of correction and complaint investigation
11 reports applying to project participants.

12 3. Project participants shall:

13 (1) Be licensed by the [division of aging] department of
14 health and senior services;

15 (2) Provide care only to persons who have been diagnosed
16 with Alzheimer's disease or Alzheimer's related dementia;

17 (3) Have buildings and furnishings that are designed to
18 provide for the resident's safety. Facilities shall have indoor
19 and outdoor activity areas, and electronically controlled exits
20 from the buildings and grounds to allow residents the ability to
21 explore while preventing them from exiting the facility's grounds
22 unattended;

23 (4) Be staffed twenty-four hours a day by the appropriate
24 number and type of personnel necessary for the proper care of
25 residents and upkeep of the facility;

1 (5) Conduct special staff training relating to the needs,
2 care and safety of persons with Alzheimer's disease or
3 Alzheimer's related dementia within the first thirty days of
4 employment;

5 (6) Utilize personal electronic monitoring devices for any
6 resident whose physician recommends use of such device;

7 (7) Permit the resident's physician, in consultation with
8 the family members or health care advocates of the resident, to
9 determine whether the facility meets the needs of the resident;

10 (8) Be equipped with an automatic sprinkler system, in
11 compliance with the National Fire Protection Association Code 13
12 or National Fire Protection Association Code 13R, and an
13 automated fire alarm system and smoke barriers in compliance with
14 the [1997] 2000 Life Safety Codes for Existing Health Care
15 Occupancy; and

16 (9) Implement a social model for the residential
17 environment rather than an institutional medical model.

18 4. For purposes of this section, "health care facilities
19 for persons with Alzheimer's disease or Alzheimer's related
20 dementia" means facilities that are specifically designed and
21 operated to provide elderly individuals who have chronic
22 confusion or dementia illness, or both, with a safe, structured
23 but flexible environment that encourages physical activity
24 through a well-developed recreational and aging-in-place, and
25 activity program. Such program shall continually strive to

1 promote the highest practicable physical and mental abilities and
2 functioning of each resident.

3 198.088. 1. Every facility, in accordance with the rules
4 applying to each particular type of facility, shall ensure that:

5 (1) There are written policies and procedures available to
6 staff, residents, their families or legal representative and the
7 public which govern all areas of service provided by the
8 facility. The facility shall also retain and make available for
9 public inspection at the facility to staff, residents, their
10 families or legal representative and the public a complete copy
11 of each official notification from the department of violations,
12 deficiencies, licensure approvals, disapprovals, and responses, a
13 description of services, basic rate and charges for any services
14 not covered by the basic rate, if any, and a list of names,
15 addresses and occupation of all individuals who have a
16 proprietary interest in the facility;

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

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

23 (b) As changes occur in their physical or mental condition,
24 necessitating service or care which cannot be adequately provided
25 by the facility, residents are transferred promptly to hospitals,

1 skilled nursing facilities, or other appropriate facilities; and

2 (c) Except in the case of an emergency, the resident, [his]
3 the resident's next of kin, attending physician, and the
4 responsible agency, if any, are consulted at least thirty days in
5 advance of the transfer or discharge of any resident, and
6 casework services or other means are utilized to assure that
7 adequate arrangements exist for meeting [his] the resident's
8 needs through other resources;

9 (3) Policies define the uses of chemical and physical
10 restraints, identify the professional personnel who may authorize
11 the application of restraints in emergencies and describe the
12 mechanism for monitoring and controlling their use;

13 (4) Policies define procedures for submittal of complaints
14 and recommendations by residents and for assuring response and
15 disposition;

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

19 (6) Each resident admitted to the facility:

20 (a) Is fully informed of his or her rights and
21 responsibilities as a resident. Prior to or at the time of
22 admission, a list of resident rights shall be provided to each
23 resident, or [his] the resident's designee, next of kin, or legal
24 guardian. A list of resident rights shall be posted in a
25 conspicuous location in the facility and copies shall be

1 available to anyone upon request;

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

7 (c) Is fully informed by a physician of his or her health
8 and medical condition unless medically contraindicated, as
9 documented by a physician in his or her resident record, and is
10 afforded the opportunity to participate in the planning of [his]
11 the resident's total care and medical treatment and to refuse
12 treatment, and participates in experimental research only upon
13 [his] the resident's informed written consent;

14 (d) Is transferred or discharged only for medical reasons
15 or for [his] the resident's welfare or that of other residents,
16 or for nonpayment for [his] the resident's stay. No resident may
17 be discharged without notice of his or her right to a hearing and
18 an opportunity to be heard on the issue of whether [his] the
19 resident's immediate discharge is necessary. Such notice shall
20 be given in writing no less than thirty days in advance of the
21 discharge except in the case of an emergency discharge. In
22 emergency discharges a written notice of discharge and right to a
23 hearing shall be given as soon as practicable and an expedited
24 hearing shall be held upon request of the resident, next of kin,
25 legal guardian, or nursing facility;

1 (e) Is encouraged and assisted, throughout [his] the
2 resident's period of stay, to exercise his or her rights as a
3 resident and as a citizen, and to this end may voice grievances
4 and recommend changes in policies and services to facility staff
5 or to outside representatives of [his] the resident's choice,
6 free from restraint, interference, coercion, discrimination, or
7 reprisal;

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

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

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

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

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

23 When restraints are indicated, devices that are least
24 restrictive, consistent with the resident's total treatment

1 program, shall be used;

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

7 (i) Is treated with consideration, respect, and full
8 recognition of [his] the resident's dignity and individuality,
9 including privacy in treatment and in care for [his] the
10 resident's personal needs;

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

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

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

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

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

25 (o) Is allowed the option of purchasing or renting goods or

1 services not included in the per diem or monthly rate from a
2 supplier of [his] the resident's own choice;

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

6 (8) A written account, available to residents and their
7 families, is maintained on a current basis for each resident with
8 written receipts for all personal possessions and funds received
9 by or deposited with the facility and for all disbursements made
10 to or on behalf of the resident.

11 2. Each facility and the department shall encourage and
12 assist residents in the free exercise of the resident's rights to
13 civil and religious liberties, including knowledge of available
14 choices and the right to independent personal decision. Each
15 resident shall be given a copy of a statement of [his] the
16 resident's rights and responsibilities, including a copy of the
17 facility's rules and regulations. Each facility shall prepare a
18 written plan to ensure the respect of each resident's rights and
19 privacy and shall provide appropriate staff training to implement
20 the plan.

21 3. (1) Each facility shall establish written procedures
22 approved by the department by which complaints and grievances of
23 residents may be heard and considered. The procedures shall
24 provide for referral to the department of any complaints or
25 grievances not resolved by the facility's grievance procedure.

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

4 (3) If anyone wishes to complain about treatment,
5 conditions, or violations of rights, [he] such person shall write
6 or cause to be written his or her grievance or shall state it
7 orally to the designee no later than fourteen days after the
8 occurrence giving rise to the grievance. When the department
9 receives a complaint that does not contain allegations of abuse
10 or neglect or allegations which would, if substantiated,
11 constitute violation of a class I or class II standard as defined
12 in section 198.085, and the complainant indicates that the
13 complaint was not filed with the facility prior to the reporting
14 of it to the department, the department may in such instances
15 refer the complaint to the staff person who is designated by the
16 facility to receive all grievances when they are first made. In
17 such instances the department shall assure appropriate response
18 from the facility, assure resolution at a subsequent on-site
19 visit and provide a report to the complainant. The designee
20 shall confer with persons involved in the occurrence and with any
21 other witnesses and, no later than three days after the
22 grievance, give a written explanation of findings and proposed
23 remedies, if any, to the complainant and to the aggrieved party,
24 if someone other than the complainant. Where appropriate because
25 of the mental or physical condition of the complainant or the

1 aggrieved party, the written explanation shall be accompanied by
2 an oral explanation.

3 (4) The department shall establish and implement procedures
4 for the making and transmission of complaints to the department
5 by any person alleging violation of the provisions of sections
6 198.003 to 198.186, 198.200, 208.030, and 208.159, RSMo, and the
7 standards established thereunder. The department shall promptly
8 review each complaint. In the case of a refusal to investigate,
9 the department shall promptly notify the complainant of its
10 refusal and the reasons therefor; and in every other case, the
11 department shall, following investigation, notify the complainant
12 of its investigation and any proposed action.

13 4. Whenever the department finds upon investigation that
14 there have been violations of the provisions of sections 198.003
15 to 198.186, 198.200, 208.030, and 208.159, RSMo, or the standards
16 established thereunder by any person licensed under the
17 provisions of chapter 330, 331, 332, 334, 335, 336, 337, 338, or
18 344, RSMo, the department shall forward a report of its findings
19 to the appropriate licensing or examining board for further
20 investigation.

21 5. Each facility shall maintain a complete record of
22 complaints and grievances made against such facility and a record
23 of the final disposition of the complaints and grievances. Such
24 record shall be open to inspection by representatives of the
25 department during normal business hours.

1 6. Nothing in this section shall be construed as requiring
2 a resident to exhaust grievance procedures established by the
3 facility or by the department prior to filing a complaint
4 pursuant to section 198.090.

5 198.090. 1. An operator may make available to any resident
6 the service of holding in trust personal possessions and funds of
7 the resident and shall, as authorized by the resident, expend the
8 funds to meet the resident's personal needs. In providing this
9 service the operator shall:

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

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

18 (3) Deposit any personal funds received from or on behalf
19 of a resident in an account separate from the facility's funds,
20 except that an amount to be established by rule of the [division
21 of aging] department may be kept in a petty cash fund for the
22 resident's personal needs;

23 (4) Keep a written account, available to a resident and
24 [his] a resident's designee or guardian, maintained on a current
25 basis for each resident, with written receipts, for all personal

1 possessions and funds received by or deposited with the facility
2 and for all disbursements made to or on behalf of the resident;

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

6 (6) Within five days of the discharge of a resident,
7 provide the resident, or [his] the resident's designee or
8 guardian, with an up-to-date accounting of the resident's
9 personal funds and return to the resident the balance of [his]
10 the resident's funds and all [his] the resident's personal
11 possessions;

12 (7) Upon the death of a resident who has been a recipient
13 of aid, assistance, care, services, or who has had moneys
14 expended on his or her behalf by the department of social
15 services, provide the department a complete account of all the
16 resident's personal funds within sixty days from the date of
17 death. The total amount paid to the decedent or expended upon
18 his or her behalf by the department shall be a debt due the state
19 and recovered from the available funds upon the department's
20 claim on such funds. The department shall make a claim on the
21 funds within sixty days from the date of the accounting of the
22 funds by the facility. The nursing facility shall pay the claim
23 made by the department of social services from the resident's
24 personal funds within sixty days. Where the name and address are
25 reasonably ascertainable, the department of social services shall

1 give notice of the debt due the state to the person whom the
2 recipient had designated to receive the quarterly accounting of
3 all financial transactions made [under] pursuant to this section,
4 or the resident's guardian or conservator or the person or
5 persons listed in nursing home records as a responsible party or
6 the fiduciary of the resident's estate. If any funds are
7 available after the department's claim, the remaining provisions
8 of this section shall apply to the balance, unless the funds
9 belonged to a person other than the resident, in which case the
10 funds shall be paid to that person;

11 (8) Upon the death of a resident who has not been a
12 recipient of aid, assistance, care, services, or who has not had
13 moneys expended on his or her behalf by the department of social
14 services or the department has not made a claim on the funds,
15 provide the fiduciary of resident's estate, at the fiduciary's
16 request, a complete account of all the resident's personal funds
17 and possessions and deliver to the fiduciary all possessions of
18 the resident and the balance of the resident's funds. If, after
19 one year from the date of death, no fiduciary makes claim upon
20 such funds or possessions, the operator shall notify the
21 department that the funds remain unclaimed. Such unclaimed funds
22 or possessions shall be disposed of as follows:

23 (a) If the unclaimed funds or possessions have a value
24 totaling one hundred and fifty dollars or less, the funds or the
25 proceeds of the sale of the possessions may be deposited in a

1 fund to be used for the benefit of all residents of the facility
2 by providing the residents social or educational activities. The
3 facility shall keep an accounting of the acquisitions and
4 expenditure of these funds; or

5 (b) If the unclaimed funds or possessions have a value
6 greater than one hundred and fifty dollars, the funds or
7 possessions shall be immediately presumed to be abandoned
8 property [under] pursuant to sections 447.500 to 447.585, RSMo,
9 and the procedures provided for in those sections shall apply
10 notwithstanding any other provisions of those sections which
11 require a period greater than two years for a presumption of
12 abandonment;

13 (9) Upon ceasing to be the operator of a facility, all
14 funds and property held in trust pursuant to this section shall
15 be transferred to the new operator in accordance with sound
16 accounting principles, and a closeout report signed by both the
17 outgoing operator and the successor operator shall be prepared.
18 The closeout report shall include a list of current balances of
19 all funds held for residents respectively and an inventory of all
20 property held for residents respectively. If the outgoing
21 operator refuses to sign the closeout report, he or she shall
22 state in writing the specific reasons for his or her failure to
23 so sign, and the successor operator shall complete the report and
24 attach an affidavit stating that the information contained
25 therein is true to the best of his or her knowledge and belief.

1 Such report shall be retained with all other records and accounts
2 required to be maintained [under] pursuant to this section;

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

6 2. Any owner, operator, manager, employee, or affiliate of
7 an owner or operator who receives any personal property or
8 anything else of value from a resident, shall, if the thing
9 received has a value of ten dollars or more, make a written
10 statement giving the date it was received, from whom it was
11 received, and its estimated value. Statements required to be
12 made pursuant to this subsection shall be retained by the
13 operator and shall be made available for inspection by the
14 department, or by the department of mental health when the
15 resident has been placed by that department, and by the resident,
16 and [his] the resident's designee or legal guardian. Any person
17 who fails to make a statement required by this subsection is
18 guilty of a class C misdemeanor.

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

24 4. Subsections 2 and 3 of this section shall not apply if
25 the property or other thing of value is held in trust in

1 accordance with subsection 1 of this section, is received in
2 payment for services rendered or pursuant to the terms of a
3 lawful contract, or is received from a resident who is related to
4 the recipient within the fourth degree of consanguinity or
5 affinity.

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

10 6. Any operator, or any affiliate or employee of an
11 operator, who puts to his or her own use or the use of the
12 facility or otherwise diverts from the resident's use any
13 personal funds of the resident shall be guilty of a class A
14 misdemeanor.

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

18 8. For each report the [division] department shall attempt
19 to obtain the name and address of the facility, the name of the
20 facility employee, the name of the resident, information
21 regarding the nature of the misappropriation, the name of the
22 complainant, and any other information which might be helpful in
23 an investigation.

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

1 10. If the investigation indicates probable
2 misappropriation of property or funds of a resident, the
3 investigator shall refer the complaint together with [his] the
4 investigator's report to the department director or [his] the
5 director's designee for appropriate action.

6 11. Reports shall be confidential, as provided [under
7 section 660.320] pursuant to section 187.087, RSMo.

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

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

20 14. No person who directs or exercises any authority in a
21 facility shall evict, harass, dismiss or retaliate against a
22 resident or employee because [he] the resident or employee or any
23 member of his or her family has made a report of any violation or
24 suspected violation of laws, ordinances or regulations applying
25 to the facility which he or she has reasonable cause to believe

1 has been committed or has occurred.

2 15. The department shall maintain the employee
3 disqualification list and place on the employee disqualification
4 list the names of any persons who have been finally determined by
5 the department, pursuant to section [660.315] 187.080, RSMo, to
6 have misappropriated any property or funds of a resident while
7 employed in any facility.

8 198.093. 1. Any resident or former resident who is
9 deprived of any right created by sections 198.088 and 198.090, or
10 the estate of a former resident so deprived, may file a written
11 complaint within [one hundred eighty days] two years of the
12 alleged deprivation or injury with the office of the attorney
13 general describing the facts surrounding the alleged deprivation.
14 A copy of the complaint shall be sent to the department by the
15 attorney general.

16 2. The attorney general shall review each complaint and may
17 initiate legal action as provided under sections 198.003 to
18 198.186.

19 3. If the attorney general fails to initiate a legal action
20 within sixty days of receipt of the complaint, the complainant
21 may, within two hundred forty days of filing the complaint with
22 the attorney general, bring a civil action in an appropriate
23 court against any owner, operator or the agent of any owner or
24 operator to recover actual damages. The court may, in its
25 discretion, award punitive damages which shall be limited to the

1 larger of five hundred dollars or five times the amount of
2 special damages, unless the deprivation complained of is the
3 result of an intentional act or omission causing physical or
4 emotional injury to the resident, and may award to the prevailing
5 party attorney's fees based on the amount of time reasonably
6 expended, and may provide such equitable relief as it deems
7 necessary and proper; except that, an attorney who is paid in
8 whole or part from public funds for his or her representation in
9 any cause arising under this section shall not be awarded any
10 attorney fees.

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

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

20 6. Nothing contained in sections 198.003 to 198.186 shall
21 be construed as abrogating, abridging or otherwise limiting the
22 right of any person to bring appropriate legal actions in any
23 court of competent jurisdiction to insure or enforce any legal
24 right or to seek damages, nor shall any provision of the
25 above-named sections be construed as preventing or discouraging

1 any person from filing a complaint with the department or
2 notifying the department of any alleged deficiency or
3 noncompliance on the part of any facility.

4 198.094. All facilities licensed pursuant to this chapter
5 that receive Medicaid funding for residents pursuant to chapter
6 208, RSMo, shall submit an annual financial statement by October
7 fifteenth of each year on a form developed by the department of
8 health and senior services. The completed forms shall be
9 compiled by the department and submitted as a detailed report to
10 the members of the general assembly and the governor no later
11 than January fifteenth of each year. The form shall include but
12 is not limited to a request for the following information:

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

15 (2) Dividends paid to any shareholder, itemized by
16 shareholder;

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

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

20 (5) Ownership by any shareholder, partner, or employee in
21 any entity which does business with any facility licensed
22 pursuant to this chapter. Such form shall include the date in
23 which such ownership was acquired and the percentage of
24 ownership; and

25 (6) If a facility is owned by a publicly traded entity, a

1 copy of its Form 8-K filed with the United States Securities and
2 Exchange Commission.

3 198.525. Except as otherwise provided for in section
4 198.526, in order to comply with sections 198.012 and 198.022,
5 the department of health and senior services shall inspect
6 residential care facilities II, intermediate care facilities and
7 skilled nursing facilities attached to acute care hospitals at
8 least twice a year.

9 198.526. 1. Except as provided for in subsection 3 of this
10 section, the [division of aging] department of health and senior
11 services shall inspect all facilities licensed by the [division]
12 department at least twice each year. Such inspections shall be
13 conducted:

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

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

17 2. The [division] department shall annually reevaluate the
18 inspection process to ensure the requirements [of subsection 1]
19 of this section are met.

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

22 (1) The facility has no class I deficiencies or class II
23 violations related to the direct care of residents during an
24 original inspection. A finding of substantial compliance after
25 one or more revisits to an original inspection does not satisfy

1 the requirements of this subdivision;

2 (2) In the year subsequent to a finding of no class I
3 deficiencies or class II violations related to the direct care of
4 residents pursuant to subdivision (1) of this subsection, the
5 facility has no substantiated complaints involving class I
6 deficiencies or class II violations related to the direct care of
7 residents; and

8 (3) In the year subsequent to a finding of no class I
9 deficiencies or class II violations related to the direct care of
10 residents pursuant to subdivision (1) of this subsection, the
11 facility does not have a change in ownership, operator, or
12 director of nursing.

13 4. Notwithstanding any other provision of law to the
14 contrary, the department may inspect any facility at any time.
15 The department may, but is not required, to conduct an inspection
16 in connection with the investigation of any complaint filed
17 against any facility. Federal laws and rules governing surveys
18 of facilities are not affected by the provisions of this or any
19 other provision of state law.

20 5. Any employee who knowingly discloses the time of an
21 unannounced inspection to any person not involved in inspection
22 and enforcement functions is guilty of a class A misdemeanor and
23 shall have his or her employment immediately terminated.

24 198.531. 1. The [division of aging] department of health
25 and senior services, in collaboration with qualified Missouri

1 schools and universities, shall establish an aging-in-place pilot
2 program at a maximum of four selected sites throughout the state
3 which will provide a continuum of care for elders who need
4 long-term care. For purposes of this section, "qualified
5 Missouri schools and universities" means any Missouri school or
6 university which has a school of nursing, a graduate nursing
7 program, or any other similar program or specialized expertise in
8 the areas of aging, long-term care or health services for the
9 elderly.

10 2. The pilot program shall:

11 (1) Deliver a full range of physical and mental health
12 services to residents in the least restrictive environment of
13 choice to reduce the necessity of relocating such residents to
14 other locations as their health care needs change;

15 (2) Base licensure on services provided rather than on
16 facility type, which licensure shall be based on the highest
17 level of service provided at a given site; and

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

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

25 4. The [division of aging] department of health and senior

1 services shall monitor the pilot program and report to the
2 general assembly, not later than January 1, 2008, on the
3 effectiveness of such program, including quality of care,
4 resident satisfaction, and cost-effectiveness [to include] and
5 the cost equivalent of unpaid or volunteer labor. Pilot program
6 success and effectiveness shall be used to establish appropriate
7 licensure categories, including new categories if found to be
8 appropriate, for the provision of such services. The department
9 of health and senior services may, for the purpose of
10 implementing and evaluating the effectiveness of the pilot
11 program, grant exceptions to sections 198.003 to 198.186, during
12 the pilot program period if the department has determined that
13 the exception would not potentially jeopardize the health, safety
14 or welfare of any resident of the aging-in-place pilot program.

15 5. Developments authorized by this section shall be exempt
16 from the provisions of sections 197.300 to 197.367, RSMo, and
17 shall be licensed by the [division of aging] department of health
18 and senior services pursuant to sections 198.003 to 198.186.

19 198.532. Complaints filed with the [division of aging]
20 department of health and senior services against a long-term care
21 facility which allege that harm has occurred or is likely to
22 occur to a resident or residents of the facility due to actions
23 or the lack of actions taken by the facility shall be
24 investigated within thirty days of receipt of such complaints.
25 The purpose of such investigation shall be to ensure the safety,

1 protection and care of all residents of the facility likely to be
2 affected by the alleged action or inaction. Such investigation
3 shall be in addition to the investigation requirements for abuse
4 and neglect reports pursuant to [section 198.070] sections
5 187.020 to 187.028, RSMo. The [division] department shall
6 provide the results of all investigations in accordance with
7 section [660.320] 187.087, RSMo. The [division] department shall
8 provide the results of such investigation in writing to all
9 parties to the complaint, and if requested, to any of the
10 facility's residents, or their family members or guardians.
11 Complaints and written results will be readily available for
12 public access and review at the [division of aging] department of
13 health and senior services and at the long-term care facility.
14 Personal information identifying the resident will be blanked
15 out, except in regard to immediate family, the attorney-in-fact
16 or the legal guardian of the resident in question. This
17 information will remain readily available for a period of time
18 determined by the [division of aging] department.

19 208.156. 1. The division of family services shall provide
20 for granting an opportunity for a fair hearing under section
21 208.080 to any applicant or recipient whose claim for medical
22 assistance is denied or is not acted upon with reasonable
23 promptness.

24 2. Any person authorized under section 208.153 to provide
25 services for which benefit payments are authorized under section

1 208.152 whose claim for reimbursement for such services is denied
2 or is not acted upon with reasonable promptness shall be entitled
3 to a hearing before the administrative hearing commission
4 pursuant to the provisions of chapter 621, RSMo.

5 3. Any person authorized under section 208.153 to provide
6 services for which benefit payments are authorized under section
7 208.152 who is denied participation in any program or programs
8 established under the provisions of chapter 208 shall be entitled
9 to a hearing before the administrative hearing commission
10 pursuant to the provisions of chapter 621, RSMo.

11 4. Any person authorized under section 208.153 to provide
12 services for which benefit payments are authorized under section
13 208.152 who is aggrieved by any rule or regulation promulgated by
14 the department of social services or any division therein shall
15 be entitled to a hearing before the administrative hearing
16 commission pursuant to the provisions of chapter 621, RSMo.

17 5. Any person authorized under section 208.153 to provide
18 services for which benefit payments are authorized under section
19 208.152 who is aggrieved by any rule or regulation, contractual
20 agreement, or decision, as provided for in section 208.166, by
21 the department of social services or any division therein shall
22 be entitled to a hearing before the administrative hearing
23 commission pursuant to the provisions of chapter 621, RSMo.

24 6. No provider of service may file a petition for a hearing
25 before the administrative hearing commission unless the amount

1 for which he seeks reimbursement exceeds five hundred dollars.

2 7. One or more providers of service as will fairly insure
3 adequate representation of others having similar claims against
4 the department of social services or any division therein may
5 institute the hearing on behalf of all in the class if there is a
6 common question of law or fact affecting the several rights and a
7 common relief is sought.

8 8. Any person authorized under section 208.153 to provide
9 services for which benefit payments are authorized under section
10 208.152 and who is entitled to a hearing as provided for in the
11 preceding sections shall have thirty days from the date of
12 mailing or delivery of a decision of the department of social
13 services or its designated division in which to file his or her
14 petition for review with the administrative hearing commission
15 except that claims of less than five hundred dollars may be
16 accumulated until they total that sum and at which time the
17 provider shall have ninety days to file his or her petition.

18 9. When a person entitled to a hearing as provided for in
19 this section applies to the administrative hearing commission for
20 a stay order staying the actions of the department of social
21 services or its divisions, the administrative hearing commission
22 shall not grant such stay order until after a full hearing on
23 such application. The application shall be advanced on the
24 docket for immediate hearing and determination. The
25 administrative hearing commission shall accept evidence on and

1 consider the effect of the provider's continued participation in
2 the program on the health, safety, and welfare of the clients and
3 the program. The person applying for such stay order shall not
4 be granted such stay order unless that person [shall show that
5 immediate and irreparable injury, loss, or damage will result if
6 such stay order is denied, or that such person] has a reasonable
7 likelihood of success upon the merits of his or her claim; and
8 provided further that no stay order shall be issued without the
9 person seeking such order posting a bond in such sum as the
10 administrative hearing commission finds sufficient to protect and
11 preserve the interest of the department of social services or its
12 divisions. In no event may the administrative hearing commission
13 grant such stay order where the claim arises under a program or
14 programs funded by federal funds or by any combination of state
15 and federal funds, unless it is specified in writing by the
16 financial section of the appropriate federal agency that federal
17 financial participation will be continued under the stay order.
18 If a stay is granted and as a condition of the stay, the
19 administrative hearing commission shall require the provider
20 under the stay to operate under the same contractual requirements
21 as all other providers in the program.

22 10. The other provisions of this section notwithstanding, a
23 person receiving or providing benefits shall have the right to
24 bring an action in appealing from the administrative hearing
25 commission in the circuit court of Cole County, Missouri, or the

1 county of his or her residence pursuant to section 536.050, RSMo.

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

8 210.936. For purposes of providing background information
9 pursuant to sections 210.900 to 210.936, reports and related
10 information pursuant to sections [198.070 and] 187.020 to
11 187.028, 187.050 and 187.080, RSMo, section 198.090, RSMo,
12 sections 210.109 to 210.183, and section 630.170, RSMo, [and
13 sections 660.300 to 660.317, RSMo,] shall be deemed public
14 records.

15 344.050. 1. The board may refuse to issue or renew any
16 certificate of registration or authority, permit or license
17 required pursuant to this chapter for one or any combination of
18 causes stated in subsection 2 of this section. The board shall
19 notify the applicant in writing of the reasons for the refusal
20 and shall advise the applicant of his or her right to file a
21 complaint with the administrative hearing commission as provided
22 by chapter 621, RSMo.

23 2. The board may cause a complaint to be filed with the
24 administrative hearing commission as provided by chapter 621,
25 RSMo, against any holder of any certificate of registration or

1 authority, permit or license required by this chapter or any
2 person who has failed to renew or has surrendered his or her
3 certificate of registration or authority, permit or license for
4 any one or any combination of the following causes:

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

9 (2) The person has been finally adjudicated and found
10 guilty, or entered a plea of guilty or nolo contendere, pursuant
11 to criminal prosecution [under] pursuant to the laws of any state
12 or of the United States, for any offense reasonably related to
13 the qualifications, functions or duties of any profession
14 licensed or regulated [under] pursuant to this chapter, for any
15 offense an essential element of which is fraud, dishonesty or an
16 act of violence, or for any offense involving moral turpitude,
17 whether or not sentence is imposed;

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

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

1 (5) Incompetency, misconduct, gross negligence, fraud,
2 misrepresentation or dishonesty in the performance of the
3 functions or duties of any profession licensed or regulated by
4 this chapter;

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

8 (7) Impersonation of any person holding a certificate of
9 registration or authority, permit or license, or allowing any
10 person to use his or her certificate of registration or
11 authority, permit, license or diploma from any school;

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

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

19 (10) Assisting or enabling any person to practice or offer
20 to practice any profession licensed or regulated by this chapter
21 who is not registered and currently eligible to practice [under]
22 pursuant to this chapter;

23 (11) Issuance of a certificate of registration or
24 authority, permit or license based upon a material mistake of
25 fact;

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

3 (13) Knowingly failing to report abuse or neglect of a
4 resident in a long-term care facility, as required by section
5 [198.070] 187.020, RSMo, of which he has actual knowledge that it
6 is abuse or neglect.

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

11 4. No license may be suspended or revoked and no
12 application for renewal of a license may be denied [under]
13 pursuant to this section until the licensee has been afforded an
14 opportunity for hearing after due notice as provided in sections
15 621.015 to 621.205, RSMo.

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

21 491.076. 1. Any statement by an elderly or disabled
22 person, as defined in section 660.053, RSMo, made at or near the
23 time of an alleged crime or other misconduct toward such elderly
24 or disabled person shall be admissible into evidence in criminal,
25 civil and administrative proceedings in this state as substantive

1 evidence to prove the truth of the matter asserted if:

2 (1) The person is unavailable as a witness at the time of
3 the criminal, civil or administrative proceeding due to the
4 person's physical or mental condition; and

5 (2) The court finds, in a hearing conducted outside the
6 presence of the jury that the time, content and circumstances of
7 the statement provide sufficient indicia of reliability and the
8 declarant was competent.

9 2. A statement may not be admitted pursuant to this section
10 unless the party offering the statement makes known to the other
11 party or the other party's counsel his or her intention to offer
12 the statement and the particulars of the statement sufficiently
13 in advance of the proceedings to provide the other party or the
14 other party's counsel with a fair opportunity to prepare to meet
15 the statement.

16 3. Nothing in this section shall be construed to limit the
17 admissibility of statements, admissions or confessions otherwise
18 admissible by law.

19 565.200. 1. Any owner or employee of a skilled nursing
20 facility, as defined in section 198.006, RSMo, or an Alzheimer's
21 special unit or program, as defined in section 198.505, RSMo,
22 who:

23 (1) Has sexual contact, as defined in section 566.010,
24 RSMo, with a resident is guilty of a class B misdemeanor. Any
25 person who commits a second or subsequent violation of this

1 subdivision is guilty of a class A misdemeanor; or

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

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

11 3. Consent of the victim is not a defense to a prosecution
12 pursuant to this section.

13 630.140. 1. Information and records compiled, obtained,
14 prepared or maintained by the residential facility, day program
15 operated, funded or licensed by the department or otherwise,
16 specialized service, or by any mental health facility or mental
17 health program in which people may be civilly detained pursuant
18 to chapter 632, RSMo, in the course of providing services to
19 either voluntary or involuntary patients, residents or clients
20 shall be confidential.

21 2. The facilities or programs shall disclose information
22 and records including medication given, dosage levels, and
23 individual ordering such medication to the following upon their
24 request:

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

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

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

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

9 (5) Law enforcement officers and agencies, information
10 about patients, residents or clients committed pursuant to
11 chapter 552, RSMo, but only to the extent necessary to carry out
12 the responsibilities of their office, and all such law
13 enforcement officers shall be obligated to keep such information
14 confidential;

15 (6) The entity or agency authorized to implement a system
16 to protect and advocate the rights of persons with developmental
17 disabilities under the provisions of 42 U.S.C. 6042. The entity
18 or agency shall be able to obtain access to the records of a
19 person with developmental disabilities who is a client of the
20 entity or agency if such person has authorized the entity or
21 agency to have such access; and the records of any person with
22 developmental disabilities who, by reason of mental or physical
23 condition is unable to authorize the entity or agency to have
24 such access, if such person does not have a legal guardian,
25 conservator or other legal representative, and a complaint has

1 been received by the entity or agency with respect to such person
2 or there is probable cause to believe that such person has been
3 subject to abuse or neglect. The entity or agency obtaining
4 access to a person's records shall meet all requirements for
5 confidentiality as set out in this section;

6 (7) The entity or agency authorized to implement a system
7 to protect and advocate the rights of persons with mental illness
8 under the provisions of 42 U.S.C 10801 shall be able to obtain
9 access to the records of a patient, resident or client who by
10 reason of mental or physical condition is unable to authorize the
11 system to have such access, who does not have a legal guardian,
12 conservator or other legal representative and with respect to
13 whom a complaint has been received by the system or there is
14 probable cause to believe that such individual has been subject
15 to abuse or neglect. The entity or agency obtaining access to a
16 person's records shall meet all requirements for confidentiality
17 as set out in this section. The provisions of this subdivision
18 shall apply to a person who has a significant mental illness or
19 impairment as determined by a mental health professional
20 qualified under the laws and regulations of the state;

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

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

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

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

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

6 (4) To qualified personnel for the purpose of conducting
7 scientific research, management audits, financial audits, program
8 evaluations or similar studies; provided, that such personnel
9 shall not identify, directly or indirectly, any individual
10 patient, resident or client in any report of such research, audit
11 or evaluation, or otherwise disclose patient, resident or client
12 identities in any manner;

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

15 (6) To law enforcement officers or public health officers,
16 but only to the extent necessary to carry out the
17 responsibilities of their office, and all such law enforcement
18 and public health officers shall be obligated to keep such
19 information confidential;

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

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

25 (9) To the department of social services or the department

1 of health and senior services as necessary to report or have
2 investigated abuse, neglect, or rights violations of patients,
3 residents, or clients;

4 (10) To a county board established pursuant to sections
5 205.968 to 205.972, RSMo 1986, but only to the extent necessary
6 to carry out their statutory responsibilities. The county board
7 shall not identify, directly or indirectly, any individual
8 patient, resident or client.

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

12 5. The records and files maintained in any court proceeding
13 under chapter 632, RSMo, shall be confidential and available only
14 to the patient, his attorney, guardian, or, in the case of a
15 minor, to a parent or other person having legal custody of the
16 patient, and to the petitioner and his attorney. In addition,
17 the court may order the release or use of such records or files
18 only upon good cause shown, and the court may impose such
19 restrictions as the court deems appropriate.

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

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

1 section.

2 630.167. 1. Upon receipt of a report, the department or
3 its agents, contractors or vendors or the department of health
4 and senior services, if such facility or program is licensed
5 pursuant to chapter 197, RSMo, shall initiate an investigation
6 within twenty-four hours.

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

23 3. (1) Reports referred to in section 630.165 and the
24 investigative reports referred to in this section shall be
25 confidential, shall not be deemed a public record, and shall not

1 be subject to the provisions of section 109.180, RSMo, or chapter
2 610, RSMo; except that: complete copies all such reports shall
3 be open and available to the parents or other guardian of the
4 patient, resident, or client who is the subject of such report,
5 except that the names and any other descriptive information of
6 the complainant or other person mentioned in the reports shall
7 not be disclosed unless such complainant or person specifically
8 consents to such disclosure. All reports referred to in this
9 section shall be admissible in any judicial proceedings or
10 hearing in accordance with section 36.390, RSMo, or any
11 administrative hearing before the director of the department of
12 mental health, or the director's designee. All such reports may
13 be disclosed by the department of mental health to law
14 enforcement officers and public health officers, but only to the
15 extent necessary to carry out the responsibilities of their
16 offices, and to the department of social services and the
17 department of health and senior services, and to boards appointed
18 pursuant to sections 205.968 to 205.990, RSMo, that are providing
19 services to the patient, resident or client as necessary to
20 report or have investigated abuse, neglect, or rights violations
21 of patients, residents or clients provided that all such law
22 enforcement officers, public health officers, department of
23 social services' officers, department of health and senior
24 services' officers, and boards shall be obligated to keep such
25 information confidential;

1 (2) Except as otherwise provided in this section, the
2 proceedings, findings, deliberations, reports and minutes of
3 committees of health care professionals as defined in section
4 537.035, RSMo, or mental health professionals as defined in
5 section 632.005, RSMo, who have the responsibility to evaluate,
6 maintain, or monitor the quality and utilization of mental health
7 services are privileged and shall not be subject to the
8 discovery, subpoena or other means of legal compulsion for their
9 release to any person or entity or be admissible into evidence
10 into any judicial or administrative action for failure to provide
11 adequate or appropriate care. Such committees may exist, either
12 within department facilities or its agents, contractors, or
13 vendors, as applicable. Except as otherwise provided in this
14 section, no person who was in attendance at any investigation or
15 committee proceeding shall be permitted or required to disclose
16 any information acquired in connection with or in the course of
17 such proceeding or to disclose any opinion, recommendation or
18 evaluation of the committee or board or any member thereof;
19 provided, however, that information otherwise discoverable or
20 admissible from original sources is not to be construed as immune
21 from discovery or use in any proceeding merely because it was
22 presented during proceedings before any committee or in the
23 course of any investigation, nor is any member, employee or agent
24 of such committee or other person appearing before it to be
25 prevented from testifying as to matters within their personal

1 knowledge and in accordance with the other provisions of this
2 section, but such witness cannot be questioned about the
3 testimony or other proceedings before any investigation or before
4 any committee;

5 (3) Nothing in this section shall limit authority otherwise
6 provided by law of a health care licensing board of the state of
7 Missouri to obtain information by subpoena or other authorized
8 process from investigation committees or to require disclosure of
9 otherwise confidential information relating to matters and
10 investigations within the jurisdiction of such health care
11 licensing boards; provided, however, that such information, once
12 obtained by such board and associated persons, shall be governed
13 in accordance with the provisions of this subsection;

14 (4) Nothing in this section shall limit authority otherwise
15 provided by law in subdivisions (5) and (6) of subsection 2 of
16 section 630.140 concerning access to records by the entity or
17 agency authorized to implement a system to protect and advocate
18 the rights of persons with developmental disabilities under the
19 provisions of 42 U.S.C. 6042 and the entity or agency authorized
20 to implement a system to protect and advocate the rights of
21 persons with mental illness under the provisions of 42 U.S.C.
22 10801. In addition, nothing in this section shall serve to
23 negate assurances that have been given by the governor of
24 Missouri to the U.S. Administration on Developmental
25 Disabilities, Office of Human Development Services, Department of

1 Health and Human Services concerning access to records by the
2 agency designated as the protection and advocacy system for the
3 state of Missouri. However, such information, once obtained by
4 such entity or agency, shall be governed in accordance with the
5 provisions of this subsection.

6 4. Anyone who makes a report pursuant to this section or
7 who testifies in any administrative or judicial proceeding
8 arising from the report shall be immune from any civil liability
9 for making such a report or for testifying unless such person
10 acted in bad faith or with malicious purpose.

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

15 6. No person who directs or exercises any authority in a
16 residential facility, day program or specialized service shall
17 evict, harass, dismiss or retaliate against a patient, resident
18 or client or employee because he or she or any member of his or
19 her family has made a report of any violation or suspected
20 violation of laws, ordinances or regulations applying to the
21 facility which he or she has reasonable cause to believe has been
22 committed or has occurred.

23 7. Any person who is discharged as a result of an
24 administrative substantiation of allegations contained in a
25 report of abuse or neglect may, after exhausting administrative

1 remedies as provided in chapter 36, RSMo, appeal such decision to
2 the circuit court of the county in which such person resides
3 within ninety days of such final administrative decision. The
4 court may accept an appeal up to twenty-four months after the
5 party filing the appeal received notice of the department's
6 determination, upon a showing that:

7 (1) Good cause exists for the untimely commencement of the
8 request for the review;

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

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

12 660.030. 1. No legally recognized privilege, except
13 between attorney and client, shall exempt a person from the
14 reporting requirements of sections 187.020, 187.050 and 187.080
15 to 187.087, RSMo, and sections 660.250 to 660.295, or permit a
16 person to refuse to cooperate fully with or refuse access to
17 records by the department of health and senior services in any of
18 its investigations or activities initiated pursuant to sections
19 187.020, 187.050 and 187.080 to 187.087, RSMo, or sections
20 660.250 to 660.295, or permit a person to refuse to give or
21 receive evidence in any judicial proceeding relating to the
22 likelihood of harm to an eligible adult, as defined in section
23 660.250.

24 2. Notwithstanding any other provision of law to the
25 contrary, in any investigation conducted or action brought by the

1 department of health and senior services pursuant to any chapter
2 relating to the care and protection of an eligible adult, the
3 department and any of its personnel shall have access to all
4 financial, medical and mental health records of any such eligible
5 adult regardless of the institution, facility or entity in
6 possession of such records.

7 660.050. 1. The "Division of Aging" is hereby transferred
8 from the department of social services to the department of
9 health and senior services by a type I transfer as defined in the
10 Omnibus State Reorganization Act of 1974. The division shall aid
11 and assist the elderly and low-income handicapped adults living
12 in the state of Missouri to secure and maintain maximum economic
13 and personal independence and dignity. The division shall
14 regulate adult long-term care facilities pursuant to the laws of
15 this state and rules and regulations of federal and state
16 agencies, to safeguard the lives and rights of residents in these
17 facilities.

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

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

25 (2) Assure that an information and referral system is

1 developed and operated for the elderly, including information on
2 the Missouri care options program;

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

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

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

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

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

19 (8) Conduct a survey and review of compliance with P.L.
20 96-566 Sec. 505(d) for Supplemental Security Income recipients in
21 long-term care facilities and serve as the liaison between the
22 Social Security Administration and the department of health and
23 senior services concerning Supplemental Security Income
24 beneficiaries;

25 (9) Review plans of proposed long-term care facilities

1 before they are constructed to determine if they meet applicable
2 state and federal construction standards;

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

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

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

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

21 (14) Serve, within government and in the state at large, as
22 an advocate for elderly persons by holding hearings and
23 conducting studies or investigations concerning matters affecting
24 the health, safety, and welfare of elderly persons and by
25 assisting elderly persons to assure their rights to apply for and

1 receive services and to be given fair hearings when such services
2 are denied;

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

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

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

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

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

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

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

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

15 3. The division director, subject to the supervision of the
16 director of the department of health and senior services, shall
17 be the chief administrative officer of the division and shall
18 exercise for the division the powers and duties of an appointing
19 authority pursuant to chapter 36, RSMo, to employ such
20 administrative, technical and other personnel as may be necessary
21 for the performance of the duties and responsibilities of the
22 division.

23 4. The division may withdraw designation of an area agency
24 on aging only when it can be shown the federal or state laws or
25 rules have not been complied with, state or federal funds are not

1 being expended for the purposes for which they were intended, or
2 the elderly are not receiving appropriate services within
3 available resources, and after consultation with the director of
4 the area agency on aging and the area agency board. Withdrawal of
5 any particular program of services may be appealed to the
6 director of the department of health and senior services and the
7 governor. In the event that the division withdraws the area
8 agency on aging designation in accordance with the Older
9 Americans Act, the division shall administer the services to
10 clients previously performed by the area agency on aging until a
11 new area agency on aging is designated.

12 5. Any person hired by the department of health and senior
13 services after August 13, 1988, to conduct or supervise
14 inspections, surveys or investigations pursuant to chapter 198,
15 RSMo, shall complete at least one hundred hours of basic
16 orientation regarding the inspection process and applicable rules
17 and statutes during the first six months of employment. Any such
18 person shall annually, on the anniversary date of employment,
19 present to the department evidence of having completed at least
20 twenty hours of continuing education in at least two of the
21 following categories: communication techniques, skills
22 development, resident care, or policy update. The department of
23 health and senior services shall by rule describe the curriculum
24 and structure of such continuing education.

25 6. The division may issue and promulgate rules to enforce,

1 implement and effectuate the powers and duties established in
2 this section and sections [198.070 and] 187.020 to 187.034,
3 187.050 and 187.080 to 187.087, RSMo, section 198.090, RSMo, and
4 [sections 660.250 and 660.300 to 660.320] section 660.250. Any
5 rule or portion of a rule, as that term is defined in section
6 536.010, RSMo, that is created under the authority delegated in
7 this section shall become effective only if it complies with and
8 is subject to all of the provisions of chapter 536, RSMo, and, if
9 applicable, section 536.028, RSMo. This section and chapter 536,
10 RSMo, are nonseverable and if any of the powers vested with the
11 general assembly pursuant to chapter 536, RSMo, to review, to
12 delay the effective date or to disapprove and annul a rule are
13 subsequently held unconstitutional, then the grant of rulemaking
14 authority and any rule proposed or adopted after August 28, 2001,
15 shall be invalid and void.

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

20 8. The division shall, by January 1, 2002, establish
21 minimum dementia-specific training requirements for employees
22 involved in the delivery of care to persons with Alzheimer's
23 disease or related dementias who are employed by skilled nursing
24 facilities, intermediate care facilities, residential care
25 facilities, agencies providing in-home care services authorized

1 by the division of aging, adult day-care programs, independent
2 contractors providing direct care to persons with Alzheimer's
3 disease or related dementias and the division of aging. Such
4 training shall be incorporated into new employee orientation and
5 ongoing in-service curricula for all employees involved in the
6 care of persons with dementia. The department of health and
7 senior services shall, by January 1, 2002, establish minimum
8 dementia-specific training requirements for employees involved in
9 the delivery of care to persons with Alzheimer's disease or
10 related dementias who are employed by home health and hospice
11 agencies licensed by chapter 197, RSMo. Such training shall be
12 incorporated into the home health and hospice agency's new
13 employee orientation and ongoing in-service curricula for all
14 employees involved in the care of persons with dementia. The
15 dementia training need not require additional hours of
16 orientation or ongoing in-service. Training shall include at a
17 minimum, the following:

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

24 (2) For other employees who do not provide direct care for,
25 but may have daily contact with, persons with Alzheimer's disease

1 or related dementias, the training shall include an overview of
2 dementias and communicating with persons with dementia.

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

7 660.051. 1. The department of health and senior services
8 shall provide through their Internet web site:

9 (1) The most recent inspection of every long-term care
10 facility licensed in this state. If such inspection is in
11 dispute, the inspection shall not be posted on the web site until
12 the facility's response has been reviewed and considered for
13 summary publication by the department;

14 (2) A link to the federal web site that provides a summary
15 of facility inspections conducted over the last three years; and

16 (3) Information on how to obtain a copy of a complete
17 facility inspection conducted over the last three years.

18 2. Any inspection that is posted on the web site which is
19 in dispute shall contain a notation on the web site indicating
20 that such inspection is in dispute.

21 660.071. 1. The division of senior services within the
22 department of health and senior services shall create and make
23 available through the department's Internet web site information
24 that, to the best of their ability, provides a listing of all

1 public or private companies or organizations providing services
2 for older adults, including but not limited to adult day care,
3 respite care, in-home care services, services provided by the
4 area agency on aging and long-term care facilities operating in
5 the state of Missouri. Such information shall:

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

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

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

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

20 (5) Include the information in the division's current
21 senior guide. Such publication shall replace the current senior
22 guide and funds currently appropriated for the current senior
23 guide shall be applied to the new publication.

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

1 (1) Categorized by region of the state;

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

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

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

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

18 660.263. 1. Reports made pursuant to sections 660.250 to
19 660.295 shall be confidential and shall not be deemed a public
20 record and shall not be subject to the provisions of section
21 109.180, RSMo, or chapter 610, RSMo.

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

25 (1) The department or any person or agency designated by

1 the department;

2 (2) The attorney general;

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

5 (4) Any appropriate law enforcement agency; and

6 (5) The eligible adult or [his] such adult's legal guardian
7 or any other person designated by the eligible adult.

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

9 (1) Such reporter specifically authorizes disclosure of his
10 or her name; and

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

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

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

1 period of one year after recording.

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

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

1 services and the director has been prevented by another person
2 from investigating the report, including but not limited to
3 denial of access to the eligible adult, the court may issue the
4 warrant or enjoin the interference with the investigation or
5 both.

6 660.302. The department of health and senior services shall
7 investigate incidents and reports of elder abuse using the
8 procedures established in sections 660.250 to 660.295 and
9 notwithstanding any other provision of the law to the contrary,
10 shall promptly refer all suspected cases of elder abuse to the
11 appropriate law enforcement agency and prosecutor and determine
12 whether protective services are required pursuant to sections
13 660.250 to 660.295.

14 Section 1. No long-term care facility shall be more than
15 one hundred twenty days delinquent in payments to vendors of
16 essential services, including but not limited to vendors of food,
17 utilities, maintenance or pharmaceutical supplies, if such
18 delinquency affects the quality of care received by the
19 facility's residents. Upon receipt and verification of a
20 complaint of delinquency of payment from a vendor of essential
21 services, the department of health and senior services may
22 require the facility to draft a plan of correction. If the
23 department determines that the corrective measures are inadequate
24 or have not been implemented, the department may impose sanctions
25 against the facility, including revocation of the facility's

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

23 2. The report shall contain the name
24 and address of the facility, the name of the
25 resident, information regarding the nature of
26 the abuse or neglect, the name of the
27 complainant, and any other information which
28 might be helpful in an investigation.

29 3. Any person required in subsection 1
30 of this section to report or cause a report
31 to be made to the department who knowingly
32 fails to make a report within a reasonable
33 time after the act of abuse or neglect as
34 required in this subsection is guilty of a
35 class A misdemeanor.

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

42 5. Upon receipt of a report, the
43 department shall initiate an investigation
44 within twenty-four hours and, as soon as
45 possible during the course of the
46 investigation, shall notify the resident's
47 next of kin or responsible party of the
48 report and the investigation and further
49 notify them whether the report was

1 substantiated or unsubstantiated. As
2 provided in section 565.186, RSMo,
3 substantiated reports of elder abuse shall be
4 promptly reported by the department to the
5 appropriate law enforcement agency and
6 prosecutor.

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

29 7. Reports shall be confidential, as
30 provided pursuant to section 660.320, RSMo.

31 8. Anyone who makes a report pursuant
32 to this section or who testifies in any
33 administrative or judicial proceeding arising
34 from the report shall be immune from any
35 civil or criminal liability for making such a
36 report or for testifying except for liability
37 for perjury, unless such person acted in bad
38 faith or with malicious purpose. It is a
39 crime pursuant to section 565.186 and
40 565.188, RSMo, for any person to purposely
41 file a false report of elder abuse or
42 neglect.

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

49 10. No person who directs or exercises
50 any authority in a facility shall evict,

1 harass, dismiss or retaliate against a
2 resident or employee because such resident or
3 employee or any member of such resident's or
4 employee's family has made a report of any
5 violation or suspected violation of laws,
6 ordinances or regulations applying to the
7 facility which the resident, the resident's
8 family or an employee has reasonable cause to
9 believe has been committed or has occurred.
10 Through the existing division of aging
11 information and referral telephone contact
12 line, residents, their families and employees
13 of a facility shall be able to obtain
14 information about their rights, protections
15 and options in cases of eviction, harassment,
16 dismissal or retaliation due to a report
17 being made pursuant to this section.

18 11. Any person who knowingly abuses or
19 neglects a resident of a facility shall be
20 guilty of a class D felony.

21 12. The department shall maintain the
22 employee disqualification list and place on
23 the employee disqualification list the names
24 of any persons who have been finally
25 determined by the department pursuant to
26 section 660.315, RSMo, to have recklessly,
27 knowingly or purposely abused or neglected a
28 resident while employed in any facility.

29 13. The timely self-reporting of
30 incidents to the central registry by a
31 facility shall continue to be investigated in
32 accordance with department policy, and shall
33 not be counted or reported by the department
34 as a hot- line call but rather a
35 self-reported incident. If the self-reported
36 incident results in a regulatory violation,
37 such incident shall be reported as a
38 substantiated report.]

39
40 [565.186. The department of social
41 services shall investigate incidents and
42 reports of elder abuse using the procedures
43 established in sections 660.250 to 660.295,
44 RSMo, and upon substantiation of the report
45 of elder abuse, shall promptly report the
46 incident to the appropriate law enforcement
47 agency and prosecutor and shall determine
48 whether protective services are required
49 pursuant to sections 660.250 to 660.295,
50 RSMo.]

1 [565.188. 1. When any physician,
2 medical examiner, coroner, dentist,
3 chiropractor, optometrist, podiatrist,
4 resident intern, nurse, hospital and clinic
5 personnel engaged in examination, care or
6 treatment of persons, or other health
7 practitioners, psychologists, mental health
8 professional, social worker, adult day care
9 center worker, nursing home worker, probation
10 or parole officer, Christian Science
11 practitioner, peace officer or law
12 enforcement official, or other person with
13 responsibility for the care of a person sixty
14 years of age or older has reasonable cause to
15 suspect that such a person has been subjected
16 to abuse or neglect or observes such a person
17 being subjected to conditions or
18 circumstances which would reasonably result
19 in abuse or neglect, he shall immediately
20 report or cause a report to be made to the
21 department in accordance with the provisions
22 of sections 660.250 to 660.295, RSMo. Any
23 other person who becomes aware of
24 circumstances which may reasonably be
25 expected to be the result of or result in
26 abuse or neglect may report to the
27 department.

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

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

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

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

47 [565.190. Any person, official or
48 institution complying with the provisions of
49 section 565.188 in the making of a report, or

1 in cooperating with the department in any of
2 its activities pursuant to sections 565.186
3 and 565.188, except any person, official or
4 institution violating section 565.180,
5 565.182 or 565.184, shall be immune from any
6 civil or criminal liability for making such a
7 report, or in cooperating with the
8 department, unless such person acted
9 negligently, recklessly, in bad faith, or
10 with malicious purpose.]

11 [660.300. 1. Beginning January 1,
12 1993, when any physician, dentist,
13 chiropractor, optometrist, podiatrist,
14 intern, nurse, medical examiner, social
15 worker, psychologist, minister, Christian
16 Science practitioner, peace officer,
17 pharmacist, physical therapist, in-home
18 services owner, in-home services operator,
19 in-home services employee, or employee of the
20 department of social services or of the
21 department of health or of the department of
22 mental health has reasonable cause to believe
23 that an in-home services client has been
24 abused or neglected, as a result of in-home
25 services, he shall immediately report or
26 cause a report to be made to the department.

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

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

41 4. In addition to those persons
42 required to report under subsection 1 of this
43 section, any other person having reasonable
44 cause to believe that an in-home services
45 client has been abused or neglected by an
46 in-home services employee may report such
47 information to the department.

48 5. Upon receipt of a report, the
49 department shall initiate a prompt and

1 thorough investigation.

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

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

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

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

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

1 in-home services provider agency or any
2 in-home services employee which he has
3 reasonable cause to believe has been
4 committed or has occurred.

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

8 12. The department shall maintain the
9 employee disqualification list and place on
10 the employee disqualification list the names
11 of any persons who have been finally
12 determined by the department, pursuant to
13 section 660.315, to have recklessly,
14 knowingly or purposely abused or neglected an
15 in-home services client while employed by an
16 in-home services provider agency.]

17 [660.305. 1. Any person having
18 reasonable cause to believe that a
19 misappropriation of an in-home services
20 client's property or funds, or the
21 falsification of any documents verifying
22 service delivery to the in-home services
23 client has occurred, may report such
24 information to the department.

25 2. For each report the division shall
26 attempt to obtain the names and addresses of
27 the in-home services provider agency, the
28 in-home services employee, the in-home
29 services client, information regarding the
30 nature of the misappropriation or
31 falsification, the name of the complainant,
32 and any other information which might be
33 helpful in an investigation.

34 3. Any in-home services provider agency
35 or in-home services employee who puts to his
36 own use or the use of the in-home services
37 provider agency or otherwise diverts from the
38 in-home services client's use any personal
39 property or funds of the in-home services
40 client, or falsifies any documents for
41 service delivery, shall be guilty of a class
42 A misdemeanor.

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

45 5. If the investigation indicates
46 probable misappropriation of property or
47 funds, or falsification of any documents for
48 service delivery of an in-home services
49 client, the investigator shall refer the

1 complaint together with his report to the
2 department director or his designee for
3 appropriate action.

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

6 7. Anyone, except any person
7 participating in or benefitting from the
8 misappropriation of funds, who makes a report
9 pursuant to this section or who testifies in
10 any administrative or judicial proceeding
11 arising from the report shall be immune from
12 any civil or criminal liability for making
13 such a report or for testifying except for
14 liability for perjury, unless such person
15 acted negligently, recklessly, in bad faith,
16 or with malicious purpose.

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

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

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

43 [660.315. 1. After an investigation
44 and a determination has been made to place a
45 person's name on the employee
46 disqualification list, that person shall be
47 notified in writing mailed to his last known
48 address that:

49 (1) An allegation has been made against

1 him, the substance of the allegation and that
2 an investigation has been conducted which
3 tends to substantiate the allegation;
4 (2) His name will be included in the
5 employee disqualification list of the
6 department;
7 (3) The consequences of being so listed
8 including the length of time to be listed;
9 and
10 (4) His rights and the procedure to
11 challenge the allegation.
12 2. If no reply has been received within
13 thirty days of mailing the notice, the
14 department may include the name of such
15 person on its list. The length of time the
16 person's name shall appear on the employee
17 disqualification list shall be determined by
18 the director or his designee, based upon the
19 criteria contained in subsection 9 of this
20 section.
21 3. If the person so notified wishes to
22 challenge the allegation, he may file an
23 application for a hearing with the
24 department. The department shall grant the
25 application within thirty days after receipt
26 by the department and set the matter for
27 hearing, or the department shall notify the
28 applicant that, after review, the allegation
29 has been held to be unfounded and the
30 applicant's name will not be listed.
31 4. If a person's name is included on
32 the employee disqualification list without
33 notice by the department, such person may
34 file a request with the department for
35 removal of the name or for a hearing. Within
36 thirty days after receipt of the request, the
37 department shall either remove the name from
38 the list or grant a hearing and set a date
39 therefor.
40 5. Any hearing shall be conducted in
41 the county of the person's residence by the
42 director of the division of aging or his
43 designee. The provisions of chapter 536,
44 RSMo, for a contested case except those
45 provisions or amendments which are in
46 conflict with this section, shall apply to
47 and govern the proceedings contained in this
48 section and the rights and duties of the
49 parties involved. The person appealing such
50 an action shall be entitled to present

1 evidence, pursuant to the provisions of
2 chapter 536, RSMo, relevant to the
3 allegations.

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

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

22 8. A decision by the director shall be
23 inadmissible in any civil action brought
24 against a facility or the in-home services
25 provider agency and arising out of the facts
26 and circumstances which brought about the
27 employment disqualification proceeding,
28 unless the civil action is brought against
29 the facility or the in-home services provider
30 agency by the department of social services
31 or one of its divisions.

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

36 (1) Whether the person acted
37 recklessly, knowingly or purposely, as
38 defined in chapter 562, RSMo;

39 (2) The degree of the infliction of
40 physical, sexual, or emotional injury or
41 harm; or the degree of the imminent danger to
42 the health, safety or welfare of a resident
43 or in-home services client;

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

48 (4) Whether the person has previously
49 been listed on the employee disqualification
50 list;

1 (5) Any mitigating circumstances; and
2 (6) Whether alternative sanctions
3 resulting in conditions of continued
4 employment are appropriate in lieu of placing
5 a person's name on the employee
6 disqualification list. Such conditions of
7 employment may include, but are not limited
8 to, additional training and employee
9 counseling. Conditional employment shall
10 terminate upon the expiration of the
11 designated length of time and the person's
12 submitting documentation which fulfills the
13 division's requirements.

14 10. The removal of any person's name
15 from the list under this section shall not
16 prevent the director from keeping records of
17 all acts finally determined to have occurred
18 under this section.

19 11. The department shall provide the
20 list maintained pursuant to this section to
21 other state departments upon request and to
22 any person, corporation or association who:

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

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

27 (3) Employs nurses and nursing
28 assistants for temporary or intermittent
29 placement in health care facilities;

30 (4) Is approved by the department to
31 issue certificates for nursing assistants
32 training; or

33 (5) Is an entity licensed under chapter
34 197, RSMo. The department shall inform any
35 person listed above who inquires of the
36 division of aging whether or not a particular
37 name is on the list. The division may
38 require that the request be made in writing.

39 12. No person, corporation or
40 association who received the employee
41 disqualification list under subsection 11 of
42 this section shall knowingly employ any
43 person who is on the employee
44 disqualification list. Any person,
45 corporation or association who received the
46 employee disqualification list under
47 subsection 11 of this section, or any person
48 responsible for providing health care
49 service, who declines to employ or terminates
50 a person whose name is listed in this section

1 shall be immune from suit by that person or
2 anyone else acting for or in behalf of that
3 person for the failure to employ or for the
4 termination of the person whose name is
5 listed on the employee disqualification list.

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

27 [660.317. 1. For the purposes of this
28 section, the term "provider" means any
29 person, corporation or association who:

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

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

34 (3) Employs nurses or nursing
35 assistants for temporary or intermittent
36 placement in health care facilities; or

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

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

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

46 3. Beginning August 28, 1997, not later
47 than two working days of hiring any person
48 for a full-time, part-time or temporary
49 position to have contact with any patient or

1 resident the provider shall, or in the case
2 of temporary employees hired through an
3 employment agency, the employment agency
4 shall prior to sending a temporary employee
5 to a provider:

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

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

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

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

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

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

44 (3) Disclose if the applicant is listed
45 on the employee disqualification list as
46 provided in section 660.315.

47 6. An applicant who knowingly fails to
48 disclose his criminal history as required in
49 subsection 5 of this section is guilty of a
50 class A misdemeanor. A provider is guilty of

1 a class A misdemeanor if the provider
2 knowingly hires a person to have contact with
3 patients or residents and the person has been
4 convicted of, pled guilty to or nolo
5 contendere in this state or any other state
6 or has been found guilty of a crime, which if
7 committed in Missouri would be a class A or B
8 felony violation of chapter 565, 566 or 569,
9 RSMo, or any violation of subsection 3 of
10 section 198.070, RSMo, or section 568.020,
11 RSMo.

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

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

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

34 [660.320. Reports confidential under
35 section 198.070, RSMo, and sections 660.300
36 to 660.315 shall not be deemed a public
37 record and shall not be subject to the
38 provisions of section 109.180, RSMo, or
39 chapter 610, RSMo. The name of the
40 complainant or any person mentioned in the
41 reports shall not be disclosed unless:

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

45 (2) The department determines that
46 disclosure is necessary in order to prevent
47 further abuse, neglect, misappropriation of
48 property or funds, or falsification of any
49 documents verifying service delivery to an

1 in-home services client;
2 (3) Release of a name is required for
3 conformance with a lawful subpoena;
4 (4) Release of a name is required in
5 connection with a review by the
6 administrative hearing commission in
7 accordance with section 198.039, RSMo;
8 (5) The department determines that
9 release of a name is appropriate when
10 forwarding a report of findings of an
11 investigation to a licensing authority; or
12 (6) Release of a name is requested by
13 the division of family services for the
14 purpose of licensure under chapter 210,
15 RSMo.]