

SECOND REGULAR SESSION

# HOUSE BILL NO. 2212

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HINSON.

5895H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 192.2405, RSMo, section 192.2475 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session, section 192.2475 as enacted by house revision bill no. 1299, ninety-seventh general assembly, second regular session, and section 565.188 as enacted by senate bill nos. 556 & 311, ninety-second general assembly, first regular session, and to enact in lieu thereof three new sections relating to mandated reporters of elder abuse, with penalty provisions.

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

Section A. Section 192.2405, RSMo, section 192.2475 as enacted by house revision bill  
2 no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular  
3 session, section 192.2475 as enacted by house revision bill no. 1299, ninety seventh general  
4 assembly, second regular session, and section 565.188 as enacted by senate bill nos. 556 & 311,  
5 ninety-second general assembly, first regular session are repealed and three new sections enacted  
6 in lieu thereof, to be known as sections 192.2405, 192.2475, and 565.188, to read as follows:

192.2405. 1. The following persons shall be required to immediately report or cause a  
2 report to be made to the department under sections 192.2400 to 192.2470:

3 (1) Any person having reasonable cause to suspect that an eligible adult presents a  
4 likelihood of suffering serious physical harm and is in need of protective services; and

5 (2) Any adult day care worker, chiropractor, Christian Science practitioner, coroner,  
6 dentist, embalmer, employee of the departments of social services, mental health, or health and  
7 senior services, employee of a local area agency on aging or an organized area agency on aging  
8 program, **emergency medical technician, firefighter, first responder**, funeral director, home  
9 health agency, home health agency employee, hospital and clinic personnel engaged in the care

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

10 or treatment of others, in-home services owner or provider, in-home services operator or  
11 employee, law enforcement officer, long-term care facility administrator or employee, medical  
12 examiner, medical resident or intern, mental health professional, minister, nurse, nurse  
13 practitioner, optometrist, other health practitioner, peace officer, pharmacist, physical therapist,  
14 physician, physician's assistant, podiatrist, probation or parole officer, psychologist, social  
15 worker, or other person with the responsibility for the care of a person sixty years of age or older  
16 who has reasonable cause to suspect that such a person has been subjected to abuse or neglect  
17 or observes such a person being subjected to conditions or circumstances which would  
18 reasonably result in abuse or neglect. Notwithstanding any other provision of this section, a duly  
19 ordained minister, clergy, religious worker, or Christian Science practitioner while functioning  
20 in his or her ministerial capacity shall not be required to report concerning a privileged  
21 communication made to him or her in his or her professional capacity.

22       2. Any other person who becomes aware of circumstances that may reasonably be  
23 expected to be the result of, or result in, abuse or neglect of a person sixty years of age or older  
24 may report to the department.

25       3. The penalty for failing to report as required under subdivision (2) of subsection 1 of  
26 this section is provided under section 565.188.

192.2475. 1. When any adult day care worker; chiropractor; Christian Science  
2 practitioner; coroner; dentist; embalmer; **emergency medical technician**; employee of the  
3 departments of social services, mental health, or health and senior services; employee of a local  
4 area agency on aging or an organized area agency on aging program; **firefighter**; **first**  
5 **responder**; funeral director; home health agency or home health agency employee; hospital and  
6 clinic personnel engaged in examination, care, or treatment of persons; in-home services owner,  
7 provider, operator, or employee; law enforcement officer; long-term care facility administrator  
8 or employee; medical examiner; medical resident or intern; mental health professional; minister;  
9 nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist;  
10 physical therapist; physician; physician's assistant; podiatrist; probation or parole officer;  
11 psychologist; or social worker has reasonable cause to believe that an in-home services client has  
12 been abused or neglected, as a result of in-home services, he or she shall immediately report or  
13 cause a report to be made to the department. If the report is made by a physician of the in-home  
14 services client, the department shall maintain contact with the physician regarding the progress  
15 of the investigation.

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

19 immediately report the results of the investigation to the department nurse. The department may  
20 authorize the in-home services provider nurse to assist the case manager with the investigation.

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

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

27 [5.] 3. The report shall contain the names and addresses of the in-home services provider  
28 agency, the in-home services employee, the in-home services client, the home health agency, the  
29 home health agency employee, information regarding the nature of the abuse or neglect, the name  
30 of the complainant, and any other information which might be helpful in an investigation.

31 [6.] 4. In addition to those persons required to report under subsection 1 of this section,  
32 any other person having reasonable cause to believe that an in-home services client or home  
33 health patient has been abused or neglected by an in-home services employee or home health  
34 agency employee may report such information to the department.

35 [7.] 5. If the investigation indicates possible abuse or neglect of an in-home services  
36 client or home health patient, the investigator shall refer the complaint together with his or her  
37 report to the department director or his or her designee for appropriate action. If, during the  
38 investigation or at its completion, the department has reasonable cause to believe that immediate  
39 action is necessary to protect the in-home services client or home health patient from abuse or  
40 neglect, the department or the local prosecuting attorney may, or the attorney general upon  
41 request of the department shall, file a petition for temporary care and protection of the in-home  
42 services client or home health patient in a circuit court of competent jurisdiction. The circuit  
43 court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order  
44 granting the department authority for the temporary care and protection of the in-home services  
45 client or home health patient, for a period not to exceed thirty days.

46 [8.] 6. Reports shall be confidential, as provided under section 192.2500.

47 [9.] 7. Anyone, except any person who has abused or neglected an in-home services  
48 client or home health patient, who makes a report pursuant to this section or who testifies in any  
49 administrative or judicial proceeding arising from the report shall be immune from any civil or  
50 criminal liability for making such a report or for testifying except for liability for perjury, unless  
51 such person acted negligently, recklessly, in bad faith, or with malicious purpose.

52 [10.] 8. Within five working days after a report required to be made under this section  
53 is received, the person making the report shall be notified in writing of its receipt and of the  
54 initiation of the investigation.

55 [11.] **9.** No person who directs or exercises any authority in an in-home services provider  
56 agency or home health agency shall harass, dismiss or retaliate against an in-home services client  
57 or home health patient, or an in-home services employee or a home health agency employee  
58 because he or she or any member of his or her family has made a report of any violation or  
59 suspected violation of laws, standards or regulations applying to the in-home services provider  
60 agency or home health agency or any in-home services employee or home health agency  
61 employee which he or she has reasonable cause to believe has been committed or has occurred.

62 [12.] **10.** Any person who abuses or neglects an in-home services client or home health  
63 patient is subject to criminal prosecution under section 565.184. If such person is an in-home  
64 services employee and has been found guilty by a court, and if the supervising in-home services  
65 provider willfully and knowingly failed to report known abuse by such employee to the  
66 department, the supervising in-home services provider may be subject to administrative penalties  
67 of one thousand dollars per violation to be collected by the department and the money received  
68 therefor shall be paid to the director of revenue and deposited in the state treasury to the credit  
69 of the general revenue fund. Any in-home services provider which has had administrative  
70 penalties imposed by the department or which has had its contract terminated may seek an  
71 administrative review of the department's action pursuant to chapter 621. Any decision of the  
72 administrative hearing commission may be appealed to the circuit court in the county where the  
73 violation occurred for a trial de novo. For purposes of this subsection, the term "violation"  
74 means a determination of guilt by a court.

75 [13.] **11.** The department shall establish a quality assurance and supervision process for  
76 clients that requires an in-home services provider agency to conduct random visits to verify  
77 compliance with program standards and verify the accuracy of records kept by an in-home  
78 services employee.

79 [14.] **12.** The department shall maintain the employee disqualification list and place on  
80 the employee disqualification list the names of any persons who have been finally determined  
81 by the department, pursuant to section 192.2490, to have recklessly, knowingly or purposely  
82 abused or neglected an in-home services client or home health patient while employed by an  
83 in-home services provider agency or home health agency. For purposes of this section only,  
84 "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this section.  
85 A person acts "knowingly" with respect to the person's conduct when a reasonable person should  
86 be aware of the result caused by his or her conduct. A person acts "recklessly" when the person  
87 consciously disregards a substantial and unjustifiable risk that the person's conduct will result  
88 in serious physical injury and such disregard constitutes a gross deviation from the standard of  
89 care that a reasonable person would exercise in the situation.

90 [15.] 13. At the time a client has been assessed to determine the level of care as required  
91 by rule and is eligible for in-home services, the department shall conduct a "Safe at Home  
92 Evaluation" to determine the client's physical, mental, and environmental capacity. The  
93 department shall develop the safe at home evaluation tool by rule in accordance with chapter  
94 536. The purpose of the safe at home evaluation is to assure that each client has the appropriate  
95 level of services and professionals involved in the client's care. The plan of service or care for  
96 each in-home services client shall be authorized by a nurse. The department may authorize the  
97 licensed in-home services nurse, in lieu of the department nurse, to conduct the assessment of  
98 the client's condition and to establish a plan of services or care. The department may use the  
99 expertise, services, or programs of other departments and agencies on a case-by-case basis to  
100 establish the plan of service or care. The department may, as indicated by the safe at home  
101 evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030, for  
102 evaluation and treatment as necessary.

103 [16.] 14. Authorized nurse visits shall occur at least twice annually to assess the client  
104 and the client's plan of services. The provider nurse shall report the results of his or her visits  
105 to the client's case manager. If the provider nurse believes that the plan of service requires  
106 alteration, the department shall be notified and the department shall make a client evaluation.  
107 All authorized nurse visits shall be reimbursed to the in-home services provider. All authorized  
108 nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients  
109 whose services have reached one hundred percent of the average statewide charge for care and  
110 treatment in an intermediate care facility, provided that the services have been preauthorized by  
111 the department.

112 [17.] 15. All in-home services clients shall be advised of their rights by the department  
113 or the department's designee at the initial evaluation. The rights shall include, but not be limited  
114 to, the right to call the department for any reason, including dissatisfaction with the provider or  
115 services. The department may contract for services relating to receiving such complaints. The  
116 department shall establish a process to receive such nonabuse and neglect calls other than the  
117 elder abuse and neglect hotline.

118 [18.] 16. Subject to appropriations, all nurse visits authorized in sections 192.2400 to  
119 192.2475 shall be reimbursed to the in-home services provider agency.

192.2475. 1. When any adult day care worker; chiropractor; Christian Science  
2 practitioner; coroner; dentist; embalmer; **emergency medical technician**; employee of the  
3 departments of social services, mental health, or health and senior services; employee of a local  
4 area agency on aging or an organized area agency on aging program; **firefighter**; **first**  
5 **responder**; funeral director; home health agency or home health agency employee; hospital and  
6 clinic personnel engaged in examination, care, or treatment of persons; in-home services owner,

7 provider, operator, or employee; law enforcement officer; long-term care facility administrator  
8 or employee; medical examiner; medical resident or intern; mental health professional; minister;  
9 nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist;  
10 physical therapist; physician; physician's assistant; podiatrist; probation or parole officer;  
11 psychologist; or social worker has reasonable cause to believe that an in-home services client has  
12 been abused or neglected, as a result of in-home services, he or she shall immediately report or  
13 cause a report to be made to the department. If the report is made by a physician of the in-home  
14 services client, the department shall maintain contact with the physician regarding the progress  
15 of the investigation.

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

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

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

27 [5.] 3. The report shall contain the names and addresses of the in-home services provider  
28 agency, the in-home services employee, the in-home services client, the home health agency, the  
29 home health agency employee, information regarding the nature of the abuse or neglect, the name  
30 of the complainant, and any other information which might be helpful in an investigation.

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36 client or home health patient, the investigator shall refer the complaint together with his or her  
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41 request of the department shall, file a petition for temporary care and protection of the in-home  
42 services client or home health patient in a circuit court of competent jurisdiction. The circuit

43 court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order  
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59 suspected violation of laws, standards or regulations applying to the in-home services provider  
60 agency or home health agency or any in-home services employee or home health agency  
61 employee which he or she has reasonable cause to believe has been committed or has occurred.

62 [12.] 10. Any person who abuses or neglects an in-home services client or home health  
63 patient is subject to criminal prosecution under section 565.180, 565.182, or 565.184. If such  
64 person is an in-home services employee and has been found guilty by a court, and if the  
65 supervising in-home services provider willfully and knowingly failed to report known abuse by  
66 such employee to the department, the supervising in-home services provider may be subject to  
67 administrative penalties of one thousand dollars per violation to be collected by the department  
68 and the money received therefor shall be paid to the director of revenue and deposited in the state  
69 treasury to the credit of the general revenue fund. Any in-home services provider which has had  
70 administrative penalties imposed by the department or which has had its contract terminated may  
71 seek an administrative review of the department's action pursuant to chapter 621. Any decision  
72 of the administrative hearing commission may be appealed to the circuit court in the county  
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86 be aware of the result caused by his or her conduct. A person acts "recklessly" when the person  
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92 Evaluation" to determine the client's physical, mental, and environmental capacity. The  
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97 licensed in-home services nurse, in lieu of the department nurse, to conduct the assessment of  
98 the client's condition and to establish a plan of services or care. The department may use the  
99 expertise, services, or programs of other departments and agencies on a case-by-case basis to  
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102 evaluation and treatment as necessary.

103 [16.] **14.** Authorized nurse visits shall occur at least twice annually to assess the client  
104 and the client's plan of services. The provider nurse shall report the results of his or her visits  
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109 whose services have reached one hundred percent of the average statewide charge for care and  
110 treatment in an intermediate care facility, provided that the services have been preauthorized by  
111 the department.

112 [17.] **15.** All in-home services clients shall be advised of their rights by the department  
113 or the department's designee at the initial evaluation. The rights shall include, but not be limited  
114 to, the right to call the department for any reason, including dissatisfaction with the provider or



115 services. The department may contract for services relating to receiving such complaints. The  
116 department shall establish a process to receive such nonabuse and neglect calls other than the  
117 elder abuse and neglect hotline.

118 [18.] 16. Subject to appropriations, all nurse visits authorized in sections 192.2400 to  
119 192.2475 shall be reimbursed to the in-home services provider agency.

565.188. 1. When any adult day care worker; chiropractor; Christian Science  
2 practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental  
3 health, or health and senior services; employee of a local area agency on aging or an organized  
4 area agency on aging program; **emergency medical technician, firefighter, first responder,**  
5 funeral director; home health agency or home health agency employee; hospital and clinic  
6 personnel engaged in examination, care, or treatment of persons; in-home services owner,  
7 provider, operator, or employee; law enforcement officer; long-term care facility administrator  
8 or employee; medical examiner; medical resident or intern; mental health professional; minister;  
9 nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist;  
10 physical therapist; physician; physician's assistant; podiatrist; probation or parole officer;  
11 psychologist; social worker; or other person with responsibility for the care of a person sixty  
12 years of age or older has reasonable cause to suspect that such a person has been subjected to  
13 abuse or neglect or observes such a person being subjected to conditions or circumstances which  
14 would reasonably result in abuse or neglect, he or she shall immediately report or cause a report  
15 to be made to the department in accordance with the provisions of sections 192.2400 to  
16 192.2470. Any other person who becomes aware of circumstances which may reasonably be  
17 expected to be the result of or result in abuse or neglect may report to the department.

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

20 3. Any person who purposely files a false report of elder abuse or neglect is guilty of a  
21 class A misdemeanor.

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

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

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