

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 2212

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HINSON.

5895H.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 192.2400 and 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 four new sections relating to mandated reporters of elder abuse, with penalty provisions.

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

Section A. Sections 192.2400 and 192.2405, RSMo, section 192.2475 as enacted by
2 house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly,
3 second regular session, section 192.2475 as enacted by house revision bill no. 1299, ninety
4 seventh general assembly, second regular session, and section 565.188 as enacted by senate bill
5 nos. 556 & 311, ninety-second general assembly, first regular session are repealed and four new
6 sections enacted in lieu thereof, to be known as sections 192.2400, 192.2405, 192.2475, and
7 565.188, to read as follows:

192.2400. As used in sections 192.2400 to 192.2505, the following terms mean:

- 2 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including
3 financial exploitation by any person, firm, or corporation **and bullying**;
4 (2) **"Bullying", intimidation or harassment that causes a reasonable person to fear**
5 **for his or her physical safety or property and may consist of physical actions including**

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.

6 **gestures; cyberbullying; oral, electronic, or written communication; and any threat of**
7 **retaliation for reporting of such acts;**

8 (3) "Court", the circuit court;

9 [(3)] (4) "Department", the department of health and senior services;

10 [(4)] (5) "Director", director of the department of health and senior services or his or her
11 designees;

12 [(5)] (6) "Eligible adult", a person sixty years of age or older who is unable to protect his
13 or her own interests or adequately perform or obtain services which are necessary to meet his or
14 her essential human needs or an adult with a disability, as defined in section 192.2005, between
15 the ages of eighteen and fifty-nine who is unable to protect his or her own interests or adequately
16 perform or obtain services which are necessary to meet his or her essential human needs;

17 [(6)] (7) "Home health agency", the same meaning as such term is defined in section
18 197.400;

19 [(7)] (8) "Home health agency employee", a person employed by a home health agency;

20 [(8)] (9) "Home health patient", an eligible adult who is receiving services through any
21 home health agency;

22 [(9)] (10) "In-home services client", an eligible adult who is receiving services in his or
23 her private residence through any in-home services provider agency;

24 [(10)] (11) "In-home services employee", a person employed by an in-home services
25 provider agency;

26 [(11)] (12) "In-home services provider agency", a business entity under contract with the
27 department or with a Medicaid participation agreement, which employs persons to deliver any
28 kind of services provided for eligible adults in their private homes;

29 [(12)] (13) "Least restrictive environment", a physical setting where protective services
30 for the eligible adult and accommodation is provided in a manner no more restrictive of an
31 individual's personal liberty and no more intrusive than necessary to achieve care and treatment
32 objectives;

33 [(13)] (14) "Likelihood of serious physical harm", one or more of the following:

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

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

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

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

48 [(14)] (15) "Neglect", the failure to provide services to an eligible adult by any person,
49 firm or corporation with a legal or contractual duty to do so, when such failure presents either
50 an imminent danger to the health, safety, or welfare of the client or a substantial probability that
51 death or serious physical harm would result;

52 [(15)] (16) "Protective services", services provided by the state or other governmental
53 or private organizations or individuals which are necessary for the eligible adult to meet his or
54 her essential human needs.

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, **or bullying as defined in subdivision (2) of**
5 **section 192.2400**, and is in need of protective services; and

6 (2) Any adult day care worker, chiropractor, Christian Science practitioner, coroner,
7 dentist, embalmer, employee of the departments of social services, mental health, or health and
8 senior services, employee of a local area agency on aging or an organized area agency on aging
9 program, **first responder**, funeral director, home health agency, home health agency employee,
10 hospital and clinic personnel engaged in the care or treatment of others, in-home services owner
11 or provider, in-home services operator or employee, law enforcement officer, long-term care
12 facility administrator or employee, medical examiner, medical resident or intern, mental health
13 professional, minister, nurse, nurse practitioner, optometrist, other health practitioner, peace
14 officer, pharmacist, physical therapist, physician, physician's assistant, podiatrist, probation or
15 parole officer, psychologist, social worker, or other person with the responsibility for the care
16 of a person sixty years of age or older who has reasonable cause to suspect that such a person has
17 been subjected to abuse or neglect or observes such a person being subjected to conditions or
18 circumstances which would reasonably result in abuse or neglect. Notwithstanding any other
19 provision of this section, a duly ordained minister, clergy, religious worker, or Christian Science
20 practitioner while functioning in his or her ministerial capacity shall not be required to report
21 concerning a privileged 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.

27 **4. As used in this section, "first responder" means any person trained and**
28 **authorized by law or rule to render emergency medical assistance or treatment. Such**
29 **persons may include, but shall not be limited to, emergency first responders, police officers,**
30 **sheriffs, deputy sheriffs, firefighters, emergency medical technicians, or emergency medical**
31 **technician-paramedics.**

192.2475. 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; **first responder, as defined in section 192.2405;** funeral
5 director; home health agency or home health agency employee; hospital and clinic personnel
6 engaged in examination, care, or treatment of persons; in-home services owner, provider,
7 operator, or employee; law enforcement officer; long-term care facility administrator or
8 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; 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; **first responder, as defined in section 192.2405**; funeral
5 director; home health agency or home health agency employee; hospital and clinic personnel
6 engaged in examination, care, or treatment of persons; in-home services owner, provider,
7 operator, or employee; law enforcement officer; long-term care facility administrator or
8 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 565.180, 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
73 where the violation occurred for a trial de novo. For purposes of this subsection, the term
74 "violation" 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.

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; **first responder, as defined in section 192.2405, or** funeral
5 director; home health agency or home health agency employee; hospital and clinic personnel
6 engaged in examination, care, or treatment of persons; in-home services owner, provider,
7 operator, or employee; law enforcement officer; long-term care facility administrator or
8 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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