

Missouri Revised Statutes

Chapter 192 Department of Health and Senior Services

August 28, 2018

Division of aging created--duties-- inspectors of nursing homes, training and continuing education requirements-- promulgation of rules, procedure-- dementia-specific training requirements established.

192.2000. 1. The "Division of Aging" is hereby transferred from the department of social services to the department of health and senior services by a type I transfer as defined in the Omnibus State Reorganization Act of 1974. The department shall aid and assist the elderly and low-income disabled adults living in the state of Missouri to secure and maintain maximum economic and personal independence and dignity. The department shall regulate adult long-term care facilities pursuant to the laws of this state and rules and regulations of federal and state agencies, to safeguard the lives and rights of residents in these facilities.

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

- (1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73, (42 U.S.C. Section 3001, et seq.), as amended;
- (2) Assure that an information and referral system is developed and operated for the elderly, including information on home and community based services;
- (3) Provide technical assistance, planning and training to local area agencies on aging;
- (4) Contract with the federal government to conduct surveys of long-term care facilities certified for participation in the Title XVIII program;

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

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

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

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

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

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

(11) Develop long-range state plans for programs, services, and activities for elderly and handicapped persons. State plans should be revised annually and should be based on area agency on aging plans, statewide priorities, and state and federal requirements;

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

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

(14) Conduct research and other appropriate activities to determine the needs of elderly

persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons to meet those needs;

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

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

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

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

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

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

performed by the area agency on aging until a new area agency on aging is designated.

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

5. The department may issue and promulgate rules to enforce, implement and effectuate the powers and duties established in this section and sections [198.070](#) and [198.090](#) and sections [192.2400](#) and [192.2475](#) to [192.2500](#). Any rule or portion of a rule, as that term is defined in section [536.010](#), that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section [536.028](#). This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

6. Home and community based services is a program, operated and coordinated by the department of health and senior services, which informs individuals of the variety of care options available to them when they may need long-term care.

7. The division shall maintain minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services authorized by the division of aging, adult day-care programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the division of aging. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The

department of health and senior services shall maintain minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

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

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

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

(L. 1984 H.B. 1131 § 2, A.L. 1988 S.B. 602, A.L. 1992 S.B. 573 & 634, A.L. 1993 S.B. 52, A.L. 1994 H.B. 1335 & 1381, A.L. 1995 H.B. 409 merged with S.B. 445 merged with S.B. 3, A.L. 2001 H.B. 603, A.L. 2014 H.B. 1299 Revision § 192.1000)

*Transferred 2014; formerly 660.050

*Revisor's note: The term "residential care facilities" may include "assisted living facilities", see section [198.005](#) regarding changes to name reference.

Definitions.

192.2005. As used in sections 192.2000 to 192.2020 and 192.2200 to 192.2260, the following terms mean:

1) "Area agency on aging", the agency designated by the department in a planning and service area to develop and administer a plan and administer available funds for a comprehensive and coordinated system of services for the elderly and persons with disabilities who require similar services;

(2) "Area agency board", the local policy-making board which directs the actions of the area agency on aging under state and federal laws and regulations;

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

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

(5) "Elderly" or "elderly persons", persons who are sixty years of age or older;

(6) "Disability", a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury or disease, where such impairment is verified by medical findings;

(7) "Local government", a political subdivision of the state whose authority is general or a combination of units of general purpose local governments;

(8) "Major life activities", functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(9) "Medicaid", medical assistance provided under section 208.151, et seq., in compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42 U.S.C. Section 301, et seq.), as amended;

(10) "Protective services", a service provided by the department of health and senior services in response to the need for protection from harm or neglect to eligible adults under sections 192.2400 to 192.2470;

(11) "Registered caregiver", a person who provides primary long-term care for an elderly person and wishes to receive information, services or support from the shared care program;

(12) "Shared care", a program administered by the department of health and senior services in which Missouri families who provide primary long-term care for an elderly person and register as a shared care member with the department shall receive access to certain supportive services and may receive a state tax credit;

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

(14) "Shared care member", a registered caregiver or shared care provider who registers with the department in order to participate in the shared care program;

(15) "Shared care provider", any state authorized long-term care provider in the state, including, but not limited to, in-home, home health, hospice,

adult day care, residential care facility or assisted living facility, or nursing home, who voluntarily registers with the department to be available as a resource for the shared care program;

(16) "Shared care tax credit", a tax credit to registered caregivers who meet the requirements of section 192.2015.

(L. 1984 H.B. 1131 § 1, A.L. 1987 S.B. 277, A.L. 1999 H.B. 316, et al., A.L. 2014 H.B. 1299 Revision § 192.1002)

Transferred 2014; formerly 660.053

Shared care program established, goals-- department duties.

192.2010. 1. The department of health and senior services shall establish a program to help families who provide the primary long-term care for an elderly person. This program shall be known as "shared care" and has the following goals:

- (1) To provide services and support for families caring for an elderly person;
- (2) To increase awareness of the variety of privately funded services which may be available to those persons caring for an elderly person;
- (3) To increase awareness of the variety of government services which may be available to those caring for an elderly person;
- (4) Recognition on an annual basis by the governor for those families participating in the shared care program and community project groups participating in the shared care program;
- (5) To provide a tax credit to members who meet the qualifications pursuant to section 192.2015; and
- (6) To promote community involvement by:
 - (a) Providing local communities information about the shared care program and to encourage the establishment of support groups where none are available and to support existing support groups, and other programs for shared care members and providers to share ideas, information and resources on caring for an elderly person; and
 - (b) Encouraging local home care, adult day care or other long-term care providers, who have regularly scheduled training sessions for paid caregivers, to voluntarily invite shared care members to participate in education and training sessions at no cost to the registered caregivers. Such providers shall not be held liable in any civil or criminal action related to

or arising out of the participation or training of shared care members in such sessions.

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

(1) Promulgate specific rules and procedures for the shared care program. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 192.2000 to 192.2020 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void;

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

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

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

(5) Encourage shared care providers, consumer groups, churches and other philanthropic organizations to help local communities develop local support systems where none are available

and to support existing support groups for persons caring for elderly persons and make department staff available, if possible;

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

(a) Identifying information about the registered caregiver for tax purposes, and the signature of the registered caregiver certifying that he or she qualifies for the shared care tax credit as provided in section 192.2015;

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

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

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

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

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

(a) Identifying information about the registered caregiver for tax purposes, and the signature of the registered caregiver certifying that he or she qualifies for the shared care tax credit as provided in section 192.2015;

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

(c) Identifying information about and the signature of the department staff for verification and certification purposes;

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

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

3. Funds appropriated for the shared care program shall be appropriated to and administered by the department of health and senior services.

(L. 1999 H.B. 316, et al., A.L. 2014 H.B. 1299 Revision § 192.1004)

Transferred 2014; formerly 660.054

Shared care tax credit available, when--eligibility requirements--rulemaking authority--penalty provision.

192.2015. 1. Any registered caregiver who meets the requirements of this section shall be eligible for a shared care tax credit in an amount not to exceed five hundred dollars to defray the cost of caring for an elderly person. In order to be eligible for a shared care tax credit, a registered caregiver shall:

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

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

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

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

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

(2) Live in the same residence to give protective oversight for the elderly person meeting the requirements described in subdivision (1) of this subsection for an

aggregate of more than six months per tax year;

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

(4) File the original completed and signed physician certification for shared care tax credit form or the original completed and signed department certification for shared care tax credit form provided for in subsection 2 of section 192.2010 along with such caregiver's Missouri individual income tax return to the department of revenue.

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

3. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 192.2000 to 192.2020 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

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

(L. 1999 H.B. 316, et al., A.L. 2014 H.B. 1299 Revision § 192.1006)

Transferred 2014; formerly 660.055

CROSS REFERENCE:

Tax Credit Accountability Act of 2004, additional requirements, 135.800 to 135.830

Area agencies for aging duties--advisory council, duties--agency records audited, when.

192.2020. 1. On and after August 13, 1984, an area agency on aging shall operate with local administrative responsibility for Title III of the Older Americans Act, and other funds allocated to it by the department. The area agency board shall be responsible for all actions of an area agency on aging in its jurisdiction, including, but not limited to, the accountability for funds and compliance with federal and state laws and rules. Such responsibility shall include all geographic areas in which the area agency on aging is designated to operate. The respective area agency board shall appoint a director of the area agency on aging in its jurisdiction. Beginning January 1, 1995, the director of the area agency on aging shall submit an annual performance report to the department director, the speaker of the house of representatives, the president pro tempore of the senate and the governor. Such performance report shall give a detailed accounting of all funds which were available to and expended by the area agency on aging from state, federal and private sources.

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

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

(2) Advise the area agency on aging with respect to the development of the area plan and budget, and review and comment on the completed area plan and budget before its transmittal to the division;

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

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

3. Each area agency board shall:

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

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

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

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

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

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

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

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

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

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

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

(L. 1984 H.B. 1131 § 3, A.L. 1994 H.B. 1335 & 1381, A.L. 2014 H.B. 1299 Revision § 192.1008)

Transferred 2014; formerly 660.057

Budget allotment tables provided to each area agency on aging, when--area plan submitted, when--on-site monitoring by department.

192.2025. 1. The department shall provide budget allotment tables to each area agency on aging by January first of each year. Each area agency on aging shall submit its area plan, area budget and service contracts to the department by March first of each year. Each April, the area agencies on aging shall present their plans to the department in a public hearing scheduled by the department and held in the area served by the area agency on aging. Within thirty days of such hearing, the department shall report findings and recommendations to the board of directors for the area agency on aging, the area agency on aging advisory council, the members of the senate budget committee and the members of the house appropriations committee assigned the department of health and senior services.

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

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

(L. 1999 S.B. 326 § 10, A.L. 2014 H.B. 1299 Revision § 192.1010)

Transferred 2014; formerly 660.058

State board of senior services created, members, terms, duties.

192.2030. (Section Repealed L. 2018 S.B. 843, cross-reference 192.014)

(L. 2001 H.B. 603, A.L. 2014 H.B. 1299 Revision § 192.1012, Repealed L. 2018 S.B. 843)

Transferred 2014; formerly 660.062

Alzheimer's disease and related disorders respite care program--definitions.

192.2100. As used in sections 192.2100 to 192.2110, the following terms shall mean:

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

(2) "Alzheimer's disease and related disorders", diseases resulting from significant destruction of brain tissue and characterized by a decline of

memory and other intellectual functions. These diseases include but are not limited to progressive, degenerative and dementing illnesses such as presenile and senile dementias, Alzheimer's disease and other related disorders;

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

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

(5) "Director", the director of the department of health and senior services;

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

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

(L. 1987 S.B. 200 § 6, A.L. 2014 H.B. 1299 Revision § 192.1020)

Transferred 2014; formerly 660.067

Respite care program for Alzheimer's purposes.

192.2105. 1. To encourage development of appropriate services for persons having Alzheimer's disease and related disorders, the department may make grants to public and private entities for pilot projects from funds specifically appropriated for this purpose. Pilot projects shall have the following goals:

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

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

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

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

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

2. The director, in accordance with chapter 536, shall promulgate rules that establish procedures for grant application, review, selection, monitoring and auditing of grants made pursuant to sections 192.2100 to 192.2110.

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

(L. 1987 S.B. 200 § 7, A.L. 2014 H.B. 1299 Revision § 192.1022)

Transferred 2014; formerly 660.069

Rules and regulations for respite care program, procedure.

192.2110. The commissioner of administration, in consultation with the director of the department, shall promulgate rules that establish procedures for contracting with grantees receiving funds under sections 192.2100 to 192.2110. No rule or portion of a rule promulgated under the authority of sections 192.2100 to 192.2110 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024.

(L. 1987 S.B. 200 § 8, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3, A.L. 2014 H.B. 1299 Revision § 192.1024)

Transferred 2014; formerly 660.070

Department to use services of certain organizations, when.

192.2150. The department shall use the services of community based, not-for-profit organizations including senior centers for the provision of home delivered meals to qualified recipients prepared by such organizations if such service is available at not more than seventy-five percent of the cost currently incurred by the department for the provision of such service.

(L. 1992 S.B. 573 & 634, A.L. 2014 H.B. 1299 Revision § 192.1030)

Transferred 2014; formerly 660.225

Definitions.

192.2200 . As used in sections 192.2200 to 192.2260, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
- (2) "Adult", an individual over the age of eighteen;
- (3) "Adult day care program", a group program designed to provide care and supervision to meet the needs of functionally impaired adults for periods of less than twenty-four hours but more than two hours per day in a place other than the adult's own home;
- (4) "Adult day care provider", the person, corporation, partnership, association or organization legally responsible for the overall operation of the adult day care program;
- (5) "Department", the department of health and senior services;
- (6) "Functionally impaired adult", an adult who by reason of age or infirmity requires care and supervision;
- (7) "License", the document issued by the department in accordance with the provisions of sections [192.2200](#) to [192.2260](#) to an adult day care program which authorizes the adult day care provider to operate the program in accordance with the provisions of sections [192.2200](#) to [192.2260](#) and the applicable rules promulgated pursuant thereto;
- (8) "Operator", any person licensed or required to be licensed under the provisions of sections [192.2200](#) to [192.2260](#) in order to establish, conduct, or maintain an adult day care program;
- (9) "Participant", a functionally impaired adult who is enrolled in an adult day care program;
- (10) "Person", any individual, firm, corporation, partnership, association, agency, or an incorporated or unincorporated organization regardless of the name used;
- (11) "Related", any of the following by blood, marriage or adoption: parent, child, grandchild, brother, sister, half-brother, half-sister, stepparent, uncle, aunt, niece, nephew, or first cousin;
- (12) "Staff participant ratio", the number of adult care staff required by the department in relation to the number of adults being cared for by such staff;
- (13) "Substantial noncompliance", any violation of a class I or class II standard or twenty or more violations of class III standards.

(L. 1984 H.B. 1131 § 4, A.L. 2014 H.B. 1299 Revision § 192.1040 merged with S.B. 567 § 660.400)

*Transferred 2014; formerly 660.400

*Revisor's note: Definitions contained in section [192.2005](#) are also applicable to sections [192.2200](#) to [192.2260](#).

License required to operate day care program--forms--documents--review--license validity period--temporary operating permit, when.

192.2205. 1. It shall be unlawful for any person to establish, maintain, or operate an adult day care program, or to advertise or hold himself or herself out as being able to perform any adult day care service, unless he or she has obtained the proper license.

2. All applications for licenses shall be made on forms provided by the department and in the manner prescribed by the department. All forms provided shall include a fee schedule.

3. The applicant shall submit all documents required by the department under this section attesting by signature that the statements contained in the application are true and correct to the best of the applicant's knowledge and belief, and that all required documents are either included with the application or are currently on file with the department.

4. Within ten working days of the effective date of any document that replaces, succeeds, or amends any of the documents required by the department to be filed pursuant to this section, an operator shall file with the department a copy of such document. The operator shall attest by signature that the document is true and correct.

5. If an operator fails to file documents or amendments to documents as required pursuant to this section and such failure is part of a pattern or practice of concealment, such failure shall be sufficient grounds for revocation of a license or disapproval of an application for a license.

6. Upon receipt of an application for a license to operate an adult day care program, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

- (1) The statements in the application are true and correct;
- (2) The adult day care program and the operator are in substantial compliance with the provisions of sections [192.2200](#) to [192.2260](#) and the standards established thereunder;

(3) Neither the operator nor any principals in the operation of the adult day care program have ever been convicted of a felony offense concerning the operation of an adult day care program, long-term health care facility or other health care facility;

(4) Neither the operator or any principals in the operation of the adult day care program are listed on the employee disqualification list maintained by the department; and

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

7. Such license shall be valid for the period designated by the department, which period shall not exceed two years from the date of issuance, for the premises and persons named in the application.

8. Upon denial of any application for a license, the department shall notify the applicant in writing, set forth therein the reasons and grounds for denial.

9. Each license issued under sections [192.2200](#) to [192.2260](#) shall include the name of the operator; the name of the adult day care program; the location of the adult day care program; the hours of operations; the number of participants who may be served; and the period for which such license is valid.

10. The department may grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the applicant is not at fault for the failure to complete the application review and inspection process.

(L. 1984 H.B. 1131 § 5, A.L. 2014 H.B. 1299 Revision § 192.1042 merged with S.B. 567 § 660.403)

*Transferred 2014; formerly 660.403

Deficiencies, operator informed in exit interview, requirements--plan of correction--categories of standards established--inspection reports made available--notices required.

192.2210. 1. Whenever a duly authorized representative of the department finds upon an inspection of an adult day care program that it is not in compliance with the provisions of sections [192.2200](#) to [192.2260](#) and the standards established thereunder, the operator shall be informed of the deficiencies in an exit interview conducted with the operator or his designee. The department shall inform the operator or designee, in writing, of any violation of a class I standard at the time the determination is made. If there was a violation of any class I standard, immediate corrective action shall be

taken by the operator or designee and a written plan of correction shall be submitted to the department. A written report shall be prepared of any deficiency and a copy of such report and a written correction order shall be sent to the operator or designee by certified mail or other delivery service that provides a dated receipt of delivery at the adult day care program address within ten working days after the inspection, stating separately each deficiency and the specific statute or regulation violated.

2. The operator or designee shall have five working days following receipt of a written report and correction order regarding a violation of a class I standard and ten working days following receipt of the report and correction order regarding violations of class II or class III standards to submit a plan of correction for the department's approval which contains specific dates for achieving compliance. Within five working days after receiving a plan of correction regarding a violation of a class I standard and within ten working days after receiving a plan of correction regarding a violation of a class II or III standard, the department shall give its written approval or rejection of the plan.

3. If there was a violation of a class I standard, an unannounced reinspection shall be conducted within twenty calendar days of the exit interview to determine if deficiencies have been corrected. If there was a violation of any class II standard and the plan of correction is acceptable, an unannounced reinspection shall be conducted between forty and ninety calendar days from the date of the exit conference to determine the status of all previously cited deficiencies. If there was a violation of class III standards sufficient to establish that the adult day care program was not in substantial compliance, an unannounced reinspection shall be conducted within one hundred twenty days of the exit interview to determine the status of previously identified deficiencies.

4. In establishing standards for each type of adult day care program, the department shall classify the standards into three categories as follows:

(1) Class I standards are standards the violation of which would present either an imminent danger to the health, safety or welfare of any participant or a substantial probability that death or serious physical harm would result;

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

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

5. Every adult day care program shall make available the most recent inspection report of the adult day care program. If the operator determines that the inspection report of the adult day care program contains individually identifiable health information, the operator may redact such information prior to making the inspection report available.

6. If an adult day care program submits satisfactory documentation that establishes correction of any deficiency contained within the written report of deficiency required by this section*, an on-site revisit of such deficiency may not be required.

7. If, following the reinspection, the adult day care program is found not in substantial compliance with sections [192.2200](#) to [192.2260](#) and the standards established thereunder or the operator is not correcting the noncompliance in accordance with the plan of correction, the department shall issue a notice of noncompliance, which shall be sent by certified mail or other delivery service that provides a dated receipt of delivery to the operator of the adult day care program, according to the most recent information or documents on file with the department.

8. The notice of noncompliance shall inform the operator or administrator that the department may seek the imposition of any other action authorized by law.

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

10. Whenever a notice of noncompliance has been issued, the operator shall post a copy of the notice of noncompliance and a copy of the most recent inspection report in a conspicuous location in the adult day care program, and the department shall send a copy of the notice of noncompliance to concerned federal, state or local governmental agencies.

(L. 2014 S.B. 567 § 660.404)

*Section "600.404", which does not exist, appears in original rolls.

Revocation of license, when--notification of operator.

192.2215. 1. The department may revoke a license in any case in which it finds that:

(1) The operator failed or refused to comply with class I or II standards, as established by the department pursuant to section [192.2210](#); or failed or refused to comply with class III standards as established by the department pursuant to section [192.2210](#), where the aggregate effect of such noncompliances presents either an imminent danger to the health, safety or welfare of any participant or a substantial probability that death or serious physical harm would result;

(2) The operator refused to allow representatives of the department to inspect the adult day care program for compliance with standards or denied representatives of the department access to participants and employees necessary to carry out the duties set forth in this chapter and rules promulgated thereunder, except where employees of the adult day care program are in the process of rendering immediate care to a participant of such adult day care program;

(3) The operator demonstrated financial incapacity to operate and conduct the adult day care program in accordance with the provisions of sections [192.2200](#) to [192.2260](#);

(4) The operator or any principals in the operation of the adult day care program have ever been convicted of, or pled guilty or nolo contendere to a felony offense concerning the operation of an adult day care program, long-term health care facility or other health care facility; or

(5) The operator or any principals in the operation of the adult day care program are listed on the EDL maintained by the department.

2. Upon revocation of a license, the department shall so notify the operator in writing, setting forth the reason and grounds for the revocation. Notice of such revocation shall be sent either by certified mail, return receipt requested, to the operator at the address of the adult day care program, or served personally upon the operator. The department shall provide the operator notice of such revocation at least ten calendar days prior to its effective date.

(L. 2014 S.B. 567 § 660.405)

Exceptions to licensure requirements for adult day care centers.

192.2220. 1. The provisions of sections [192.2200](#) to [192.2260](#) shall not apply to the following:

- (1) Any adult day care program operated by a person in which care is offered for no more than two hours per day;
- (2) Any adult day care program maintained or operated by the federal government except where care is provided through a management contract;
- (3) Any person who cares solely for persons related to the provider or who has been designated as guardian of that person;
- (4) Any adult day care program which cares for no more than four persons unrelated to the provider;
- (5) Any adult day care program licensed by the department of mental health under chapter 630 which provides care, treatment and habilitation exclusively to adults who have a primary diagnosis of mental disorder, mental illness, intellectual disability, or developmental disability as defined;
- (6) Any adult day care program administered or maintained by a religious not-for-profit organization serving a social or religious function if the adult day care program does not hold itself out as providing the prescription or usage of physical or medical therapeutic activities or as providing or administering medicines or drugs.

2. Nothing in this section shall prohibit any person listed in subsection 1 of this section from applying for a license or receiving a license if the adult day care program owned or operated by such person conforms to the provisions of sections [192.2200](#) to [192.2260](#) and all applicable rules promulgated pursuant thereto.

(L. 1984 H.B. 1131 § 6, A.L. 2014 H.B. 1064 § 660.405 merged with H.B. 1299 Revision § 192.1044 merged with S.B. 567 § 660.406)

*Transferred 2014; formerly 660.405

Right to enter premises for compliance inspections or to investigate complaints--failure to permit, effect.

192.2225. 1. The department shall have the right to enter the premises of an applicant for or holder of a license at any time during the hours of operation of a center to determine compliance with provisions of sections [192.2200](#) to [192.2260](#) and applicable rules promulgated pursuant thereto. Entry shall also be granted for investigative purposes involving complaints regarding the operations of an adult day care program. The department shall make at least two inspections per year, at least one of which shall be

unannounced to the operator or provider. The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections [192.2200](#) to [192.2260](#).

2. The department may reduce the frequency of inspections to once a year if an adult day care program is found to be in substantial compliance. The basis for such determination shall include, but not be limited to, the following:

- (1) Previous inspection reports;
- (2) The adult day care program's history of compliance with rules promulgated pursuant to this chapter; and
- (3) The number and severity of complaints received about the adult day care program.

3. The applicant for or holder of a license shall cooperate with the investigation and inspection by providing access to the adult day care program, records and staff, and by providing access to the adult day care program to determine compliance with the rules promulgated pursuant to sections [192.2200](#) to [192.2260](#).

4. Failure to comply with any lawful request of the department in connection with the investigation and inspection is a ground for refusal to issue a license or for the revocation of a license.

5. The department may designate to act for it, with full authority of law, any instrumentality of any political subdivision of the state of Missouri deemed by the department to be competent to investigate and inspect applicants for or holders of licenses.

(L. 1984 H.B. 1131 § 7, A.L. 2014 H.B. 1299 Revision § 192.1046 merged with S.B. 567 § 660.407)

*Transferred 2014; formerly 660.407

Fee for license or renewal, limitation.

192.2230. Each application for a license, or the renewal thereof, issued pursuant to sections [192.2200](#) to [192.2260](#) shall be accompanied by a nonrefundable fee in the amount required by the department. The fee, to be determined by the department, shall not exceed one hundred dollars and shall be based on the licensed capacity of the applicant.

(L. 1984 H.B. 1131 § 8, A.L. 2014 H.B. 1299 Revision § 192.1048 merged with S.B. 567 § 660.409)

*Transferred 2014; formerly 660.409

Adult daycare program manual--regional training sessions.

192.2235. The department shall create an adult day care program manual in partnership with the provider association to establish uniformity across the state and shall offer regional training sessions in order to provide technical assistance or consultation to assist applicants for or holders of licenses in meeting the requirements of sections [192.2200](#) to [192.2260](#), staff qualifications, and other aspects involving the operation of an adult day care program, and to assist in the achievement of programs of excellence related to the provision of adult day care. The program manual and regional training sessions required under this section shall be made available to adult day care programs by January 1, 2015.

(L. 1984 H.B. 1131 § 9, A.L. 2014 H.B. 1299 Revision § 192.1050 merged with S.B. 567 § 660.411)

*Transferred 2014; formerly 660.411

Inspections, when--refusal to permit access, court order issued when--injunction authorized.

192.2240. 1. Whenever the department is advised or has reason to believe that any person is operating an adult day care program without a license, or that any holder of license is not in compliance with the provisions of sections [192.2200](#) to [192.2260](#), the department shall make an investigation and inspection to ascertain the facts. If the department is not permitted access to the adult day care program in question, the department may apply to the circuit court of the county in which the program is located for an order authorizing entry for inspection. The court shall issue the order if it finds reasonable grounds necessitating the inspection.

2. If the department finds that the adult day care program is being operated in violation of sections [192.2200](#) to [192.2260](#), it may seek, among other remedies, injunctive relief against the adult day care program.

(L. 1984 H.B. 1131 § 10, A.L. 2014 H.B. 1299 Revision § 192.1052 merged with S.B. 567 § 660.414)

*Transferred 2014; formerly 660.414

License denied--suspended--revoked--hearing procedure--appeals.

192.2245. 1. Any person aggrieved by an official action of the department either refusing to issue a license or revoking a license may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section [621.045](#); except that, the petition must be filed with the administrative hearing commission within thirty calendar days after the delivery of notice to the applicant for or holder of such license or

certificate. When the notification of the official action is mailed to the applicant for or holder of such a license, there shall be included in the notice a statement of the procedure whereby the applicant for or holder of such license may appeal the decision of the department before the administrative hearing commission. It shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing or exhaust any other procedure within the department.

2. The administrative hearing commission may stay the revocation of such certificate or license, pending the commission's findings and determination in the cause, upon such conditions as the commission deems necessary and appropriate including the posting of bond or other security; except that, the commission shall not grant a stay or if a stay has already been entered shall set aside its stay, if, upon application of the department, the commission finds reason to believe that continued operation of the adult day care program to which the certificate or license in question applies pending the commission's final determination would present an imminent danger to the health, safety or welfare of any person or a substantial probability that death or serious physical harm would result. In any case in which the department has refused to issue a certificate or license, the commission shall have no authority to stay or to require the issuance of a license pending final determination by the commission.

3. The administrative hearing commission shall make the final decision as to the issuance or revocation of a license. Any person aggrieved by a final decision of the administrative hearing commission, including the department, may seek judicial review of such decision by filing a petition for review in the court of appeals for the district in which the adult day care program to which the license in question applies is located. Review shall be had, except as provided in this section, in accordance with the provisions of sections [621.189](#) and [621.193](#).

(L. 1984 H.B. 1131 § 11, A.L. 2014 H.B. 1299 Revision § 192.1054 merged with S.B. 567 § 660.416)

*Transferred 2014; formerly 660.416

Rulemaking authority.

192.2250. The department shall promulgate reasonable standards and regulations for adult day care programs. The standards and regulations shall relate to licensure requirements, staffing requirements, program policies and participant care requirements, participant right requirements, record keeping requirements, fire safety requirements and physical plant requirements.

(L. 2014 S.B. 567 § 660.417)

Rules, authority, procedure.

192.2255. The department shall have the authority to promulgate rules pursuant to this section and chapter 536 in order to carry out the provisions of sections [192.2200](#) to [192.2260](#). No rule or portion of a rule promulgated under the authority of ** sections [192.2200](#) to [192.2260](#) shall become effective unless it has been promulgated pursuant to the provisions of section [536.024](#).

(L. 1984 H.B. 1131 § 12, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3, A.L. 2014 H.B. 1299 Revision § 192.1056 merged with S.B. 567 § 660.418)

*Transferred 2014; formerly 660.418

**Word "section" appears here in original rolls of S.B. 567 § 660.418, 2014.

Violations, penalties.

[192.2260](#). 1. Any person who violates any provision of sections [192.2200](#) to [192.2260](#), or who, for himself or for any other person, makes materially false statements in order to obtain a certificate or license, or the renewal thereof, issued pursuant to sections [192.2200](#) to [192.2260](#), shall be guilty of a class A misdemeanor. Any person violating this subsection wherein abuse or neglect of a participant of the program has occurred is guilty of a class E felony.

2. Any person who is convicted pursuant to this section shall, in addition to all other penalties provided by law, have any license issued to him under sections [192.2200](#) to [192.2260](#) revoked, and shall not operate, nor hold any license to operate, any adult day care program, or other entity governed by the provisions of sections [192.2200](#) to [192.2260](#) for a period of three years after such conviction.

(L. 1984 H.B. 1131 § 13, A.L. 2014 H.B. 1299 Revision § 192.1058 merged with S.B. 567 § 660.420, A.L. 2016 H.B. 2332)

Effective 1-01-17

*Transferred 2014; formerly 660.420

Inspections and plans of correction to be provided on department website, exceptions.

192.2265. 1. The department may provide through its internet website:

- (1) The most recent inspection of every adult day care program licensed in this state and any such findings of deficiencies and the effect the deficiency would have on such program. If such inspection is in dispute, the inspection shall not be posted on the website until the program's informal dispute resolution process resolves the dispute; and

- (2) The program's proposed plan of correction.

2. Nothing in this section shall be construed as requiring the department to post any information on its internet website that is prohibited from disclosure pursuant to the federal Health Insurance Portability and Accountability Act, as amended.

(L. 2014 S.B. 567 § 660.422)

Dispute resolution, department may contract with third parties--definitions--requirements--rulemaking authority.

192.2270. 1. As used in this section, the following terms shall mean:

- (1) "Deficiency", a program's failure to meet a participation requirement or standard supported by evidence gathered from observation, interview, or record review;
- (2) "IDR", informal dispute resolution as provided for in this section;
- (3) "Independent third party", the federally designated Medicare Quality Improvement Organization in this state;
- (4) "Plan of correction", a program's response to deficiencies which explains how corrective action will be accomplished, how the program will identify other participants who may be affected by the deficiency practice, what measures will be used or systemic changes made to ensure that the deficient practice will not reoccur, and how the program will monitor to ensure that solutions are sustained.

2. The department may contract with an independent third party to conduct informal dispute resolution (IDR) for programs licensed under sections [192.2205](#) to [192.2260](#). The IDR process, including conferences, shall constitute an informal administrative process and shall not be construed to be a formal evidentiary hearing. Use of IDR under this section shall not waive the program's right to pursue further or additional legal actions.

3. The department shall establish an IDR process to determine whether a cited deficiency as evidenced by a statement of deficiencies against a program shall be upheld. The IDR process shall include the following minimum requirements:

- (1) Within ten working days of the end of the inspection, the department shall transmit to the program a statement of deficiencies committed by the program. Notification of the availability of an IDR and IDR process shall be included in the transmittal;

(2) Within ten working days of receipt of the statement of deficiencies, the program shall return a plan of correction to the department. Within such ten-day period, the program may request in writing an IDR conference to refute the deficiencies cited in the statement of deficiencies;

(3) Within ten working days of receipt for an IDR conference made by an adult day care program, the department shall hold an IDR conference unless otherwise requested by the program. The IDR conference shall provide the program with an opportunity to provide additional information or clarification in support of the program's contention that the deficiencies were erroneously cited. The program may be accompanied by counsel during the IDR conference. The type of IDR held shall be at the discretion of the program, but shall be limited to:

- (a) A desk review of written information submitted by the program; or
- (b) A telephonic conference; or
- (c) A face-to-face conference.

4. Within ten calendar days of the IDR conference described in subsection 3 of this section, the department shall make a determination, based upon the facts and findings presented, and shall transmit the decision and rationale for the outcome in writing to the program.

5. If the original statement of deficiencies should be changed as a result of the IDR conference, the department shall transmit a revised statement of deficiencies to the program with the notification of the determination within ten calendar days of the decision to change the statement of deficiencies.

6. Within ten working days of receipt of the determination and the revised statement of deficiencies, the program shall submit a plan of correction to the department.

7. The department shall not post on its website any information about the deficiencies which are in dispute unless the dispute determination is made and the program has responded with a revised plan of correction, if needed.

8. Any rule or portion of a rule, as that term is defined in section [536.010](#), that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section [536.028](#). This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul

a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2014, shall be invalid and void.

(L. 2014 S.B. 567 § 660.423)

Cost-based uniform rate for services, budget line item.

192.2275. Adult day care programs licensed under sections [192.2205](#) to [192.2260](#) shall evaluate the program rate structure in FY 2015 and determine a cost-based uniform rate for services to be presented as a budget line item in the department of health and senior services' FY 2016 budget request for adult day programs which provide care, treatment, rehabilitation, and habilitation exclusively to adults and seniors with physical disabilities, mental, neurological, and cognitive disorders such as brain injuries, dementia, and other intellectual impairments, excluding in the budget request the cost for individuals already funded by a department of mental health waiver.

(L. 2014 S.B. 567 § 660.424)

Definitions.

192.2300. As used in sections 192.2300 to 192.2315, the following terms mean:

- 1) "Department", the department of health and senior services;
- (2) "Long-term care facility", any facility licensed pursuant to chapter 198 and long-term care facilities connected with hospitals licensed pursuant to chapter 197;
- (3) "Office", the office of the state ombudsman for long-term care facility residents;
- (4) "Ombudsman", the state ombudsman for long-term care facility residents;
- (5) "Regional ombudsman coordinators", designated individuals working for, or under contract with, the area agencies on aging, and who are so designated by the area agency on aging and certified by the ombudsman as meeting the qualifications established by the department;
- (6) "Resident", any person who is receiving care or treatment in a long-term care facility.

(L. 1991 H.B. 444 § 1, A.L. 2014 H.B. 1299 Revision § 192.1060)

Transferred 2014; formerly 660.600

Office of state ombudsman for long-term care facility residents created in

**department of health and senior services--
purpose--powers and duties.**

192.2305. 1. There is hereby established within the department of health and senior services the "Office of State Ombudsman for Long-Term Care Facility Residents", for the purpose of helping to assure the adequacy of care received by residents of long-term care facilities and to improve the quality of life experienced by them, in accordance with the federal Older Americans Act, 42 U.S.C. Section 3001, et seq.

2. The office shall be administered by the state ombudsman, who shall devote his or her entire time to the duties of his or her position.

3. The office shall establish and implement procedures for receiving, processing, responding to, and resolving complaints made by or on behalf of residents of long-term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long-term care services, of public agencies or of social service agencies, which may adversely affect the health, safety, welfare or rights of such residents.

4. The department shall establish and implement procedures for resolution of complaints. The ombudsman or representatives of the office shall have the authority to:

(1) Enter any long-term care facility and have access to residents of the facility at a reasonable time and in a reasonable manner. The ombudsman shall have access to review resident records, if given permission by the resident or the resident's legal guardian. Residents of the facility shall have the right to request, deny, or terminate visits with an ombudsman;

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

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

6. The ombudsman may recommend to the relevant governmental agency changes in the rules and regulations adopted or proposed by such governmental agency which do or may adversely affect the health, safety, welfare, or civil or human rights of any resident in a facility. The office shall analyze and monitor the development and implementation of federal, state and local laws,

regulations and policies with respect to long-term care facilities and services in the state and shall recommend to the department changes in such laws, regulations and policies deemed by the office to be appropriate.

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

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

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

(1) Establish and conduct recruitment programs for volunteers;

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

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

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

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

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

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

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

(L. 1991 H.B. 444 § 2, A.L. 2003 S.B. 556 & 311, A.L. 2014 H.B. 1299 Revision § 192.1062)

Transferred 2014; formerly 660.603

Confidentiality of ombudsman's files and records, exceptions, violations, penalty.

192.2310. 1. Any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless:

- (1) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or
- (2) Such disclosure is required by court order.

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

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

4. The office shall not be required to testify in any court with respect to matters held to be confidential in this section except as the court may deem necessary to enforce the provisions of sections 192.2300 to 192.2315, or where otherwise required by court order.

(L. 1991 H.B. 444 § 3, A.L. 2014 H.B. 1299 Revision § 192.1064)

Transferred 2014; formerly 660.605

Immunity from liability for official duties for staff and volunteers--information furnished office, no reprisals against

employees of facilities or residents, violations, penalty.

192.2315. 1. Any regional coordinator or local program staff, whether an employee or an unpaid volunteer, shall be treated as a representative of the office. No representative of the office shall be held liable for good faith performance of his or her official duties under the provisions of sections 192.2300 to 192.2315 and shall be immune from suit for the good faith performance of such duties. Every representative of the office shall be considered a state employee under section 105.711.

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

(L. 1991 H.B. 444 § 4, A.L. 2014 H.B. 1299 Revision § 192.1066)

Transferred 2014; formerly 660.608

Report of abuse or neglect of in-home services or home health agency client, duty--penalty--contents of report--investigation, procedure--confidentiality of report--immunity--retaliation prohibited, penalty--employee disqualification list--safe at home evaluations, procedure.

192.2475. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; emergency medical technician; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; firefighter; first responder, as defined in section 192.2405; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner;

medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the in-home services client, the department shall maintain contact with the physician regarding the progress of the investigation.

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

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

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

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

6. Reports shall be confidential, as provided under section 192.2500.

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

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

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

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

11. The department shall establish a quality assurance and supervision process for clients that requires an in-home services provider agency to conduct random

visits to verify compliance with program standards and verify the accuracy of records kept by an in-home services employee.

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

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

14. Authorized nurse visits shall occur at least twice annually to assess the client and the client's plan of services. The provider nurse shall report the results of his or her visits to the client's case manager. If the provider nurse believes that the plan of service requires alteration, the department shall be notified and the department shall make a client evaluation. All authorized nurse visits shall be reimbursed to the in-home services provider. All authorized nurse visits

shall be reimbursed outside of the nursing home cap for in-home services clients whose services have reached one hundred percent of the average statewide charge for care and treatment in an intermediate care facility, provided that the services have been preauthorized by the department.

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

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

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311, A.L. 2003 2nd Ex. Sess. S.B. 4, A.L. 2010 S.B. 842, et al. merged with S.B. 1007, A.L. 2014 H.B. 1299 Revision § 192.1102 merged with S.B. 491 § 197.1030, A.L. 2016 H.B. 2332 merged with S.B. 732)

Effective 1-01-17

Transferred 2014; formerly 660.300

Employee disqualification list, notification of placement, contents--challenge of allegation, procedure--hearing, procedure--appeal--removal of name from list--list provided to whom--prohibition of employment.

192.2490. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

- (1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;
- (2) The person's name will be included in the employee disqualification list of the department;
- (3) The consequences of being so listed including the length of time to be listed; and
- (4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the

director or the director's designee, based upon the criteria contained in subsection 9 of this section.

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

4. If a person's name is included on the employee disqualification list without the department providing notice as required under subsection 1 of this section, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefor.

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

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

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

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of health and senior services or one of its divisions.

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

- (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
- (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;
- (3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;
- (4) Whether the person has previously been listed on the employee disqualification list;
- (5) Any mitigating circumstances;
- (6) Any aggravating circumstances; and
- (7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department of health and senior services' requirements.

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

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

- (1) Is licensed as an operator under chapter 198;
- (2) Provides in-home services under contract with the department of social services or its divisions;
- (3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;
- (4) Is approved by the department to issue certificates for nursing assistants training;
- (5) Is an entity licensed under chapter 197;
- (6) Is a recognized school of nursing, medicine, or other health profession for the purpose of

determining whether students scheduled to participate in clinical rotations with entities described in subdivision (1), (2), or (5) of this subsection are included in the employee disqualification list; or

(7) Is a consumer reporting agency regulated by the federal Fair Credit Reporting Act that conducts employee background checks on behalf of entities listed in subdivisions (1), (2), (5), or (6) of this subsection. Such a consumer reporting agency shall conduct the employee disqualification list check only upon the initiative or request of an entity described in subdivisions (1), (2), (5), or (6) of this subsection when the entity is fulfilling its duties required under this section. The information shall be disclosed only to the requesting entity. The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing. No person, corporation, organization, or association who is entitled to access the employee disqualification list may disclose the information to any person, corporation, organization, or association who is not entitled to access the list. Any person, corporation, organization, or association who is entitled to access the employee disqualification list who discloses the information to any person, corporation, organization, or association who is not entitled to access the list shall be guilty of an infraction.

12. No person, corporation, organization, or association who received the employee disqualification list under subdivisions (1) to (7) of subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation, organization, or association who received the employee disqualification list under subdivisions (1) to (7) of subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

13. Any employer or vendor as defined in sections [197.250](#), [197.400](#), [198.006](#), [208.900](#), or [192.2400](#) required to deny employment to an applicant or to discharge an employee, provisional or otherwise, as a result of information obtained through any portion of the background screening and employment eligibility determination process under

section [210.903](#), or subsequent, periodic screenings, shall not be liable in any action brought by the applicant or employee relating to discharge where the employer is required by law to terminate the employee, provisional or otherwise, and shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section [288.100](#), if the employer terminated the employee because the employee:

- (1) Has been found guilty, pled guilty or nolo contendere in this state or any other state of a crime as listed in subsection 6 of section [192.2495](#);
- (2) Was placed on the employee disqualification list under this section after the date of hire;
- (3) Was placed on the employee disqualification registry maintained by the department of mental health after the date of hire;
- (4) Has a disqualifying finding under this section, section [192.2495](#), or is on any of the background check lists in the family care safety registry under sections [210.900](#) to [210.936](#); or
- (5) Was denied a good cause waiver as provided for in subsection 10 of section [192.2495](#).

14. Any person who has been listed on the employee disqualification list may request that the director remove his or her name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311, A.L. 2007 S.B. 272, A.L. 2012 H.B. 1563, A.L. 2013 S.B. 127, A.L. 2014 H.B. 1299 Revision § 192.1108 merged with S.B. 491 § 197.1036, A.L. 2014 H.B. 1299 Revision § 192.1108 merged with H.B. 1371 § 197.1036)

Effective 8-28-14 (H.B. 1299 Revision)

1-01-17 (H.B. 1371)

*Transferred 2014; formerly 660.315

Criminal background checks of employees, required when--persons with criminal history not to be hired, when,

penalty--failure to disclose, penalty--improper hirings, penalty--definitions--rules to waive hiring restrictions.

192.2495. 1. For the purposes of this section, the term "**provider**" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to [chapter 198](#);
- (2) Provides in-home services under contract with the department of social services or its divisions;
- (3) Employs health care providers as defined in section [376.1350](#) for temporary or intermittent placement in health care facilities;
- (4) Is an entity licensed pursuant to [chapter 197](#);
- (5) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health; or
- (6) Is a licensed adult day care provider.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section [43.540](#).

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

- (1) Request a criminal background check as provided in section [43.540](#). Completion of an inquiry to the highway patrol for criminal records that are available for disclosure to a provider for the purpose of conducting an employee criminal records background check shall be deemed to fulfill the provider's duty to conduct employee criminal background checks pursuant to this section; except that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider from further inquiry pursuant to common law requirements governing due diligence. If an applicant has not resided in this state for five consecutive years prior to the date of his or her application for employment, the provider shall request a nationwide check for the purpose of determining if the applicant has a prior criminal history in other states. The fingerprint cards and any required fees shall be sent to the highway patrol's central repository. The fingerprints shall be used for searching the state

repository of criminal history information. If no identification is made, fingerprints shall be forwarded to the Federal Bureau of Investigation for the searching of the federal criminal history files. The patrol shall notify the submitting state agency of any criminal history information or lack of criminal history information discovered on the individual. The provisions relating to applicants for employment who have not resided in this state for five consecutive years shall apply only to persons who have no employment history with a licensed Missouri facility during that five-year period. Notwithstanding the provisions of section [610.120](#), all records related to any criminal history information discovered shall be accessible and available to the provider making the record request; and

- (2) Make an inquiry to the department of health and senior services whether the person is listed on the employee disqualification list as provided in section [192.2490](#).

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

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

- (1) Sign a consent form as required by section [43.540](#) so the provider may request a criminal records review;
- (2) Disclose the applicant's criminal history. For the purposes of this subdivision "**criminal history**" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole;
- (3) Disclose if the applicant is listed on the employee disqualification list as provided in section [192.2490](#); and
- (4) Disclose if the applicant is listed on any of the background checks in the family care safety registry established under section [210.903](#). A provider not otherwise prohibited from employing

an individual listed on such background checks may deny employment to an individual listed on any of the background checks in such registry.

6. An applicant who knowingly fails to disclose his or her criminal history as required in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A misdemeanor if the provider knowingly hires or retains a person to have contact with patients or residents and the person has been found guilty in this state or any other state or has been found guilty of a crime, which if committed in Missouri would be a class A or B felony violation of [chapter 565](#), [566](#) or [569](#), or any violation of subsection 3 of section [198.070](#) or section [568.020](#).

7. Any in-home services provider agency or home health agency shall be guilty of a class A misdemeanor if such agency knowingly employs a person to provide in-home services or home health services to any in-home services client or home health patient and such person either refuses to register with the family care safety registry or if such person:

- (1) Has any of the disqualifying factors listed in subsection 6 of this section;
- (2) Has been found guilty of or pleaded guilty or nolo contendere to any felony offense under chapter ^{*} 195 or 579;
- (3) Has been found guilty of or pleaded guilty or nolo contendere to any felony offense under section [568.045](#), [568.050](#), [568.060](#), [568.175](#), [570.023](#), [570.025](#), [570.030](#), [570.040](#) as it existed prior to January 1, 2017, [570.090](#), [570.145](#), [570.223](#), [575.230](#), or [576.080](#);
- (4) Has been found guilty of or pleaded guilty or nolo contendere to a violation of section [577.010](#) or [577.012](#) and who is alleged and found by the court to be an aggravated or chronic offender under section [577.023](#);
- (5) Has been found guilty of or pleaded guilty or nolo contendere to any offense requiring registration under section [589.400](#);
- (6) Is listed on the department of health and senior services employee disqualification list under section [192.2490](#);
- (7) Is listed on the department of mental health employee disqualification registry under section [630.170](#); or
- (8) Has a finding on the child abuse and neglect registry under sections [210.109 to 210.183](#).

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

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

10. Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section [192.2490](#), the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "**good cause**" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health or safety of residents.

(L. 1996 H.B. 1362, A.L. 1997 S.B. 358, A.L. 1998 H.B. 1046 merged with H.B. 1907, A.L. 2003 S.B. 556 & 311, A.L. 2003 2nd Ex. Sess. S.B. 4, A.L. 2014 H.B. 1299 Revision § 192.1110 merged with S.B. 491 § 197.1038, A.L. 2016 S.B. 635, A.L. 2018 H.B. 1350)

Effective 8-28-17

*Section 210.937 was repealed by S.B. 184, 2003.

Transferred 2014; formerly 660.317

Prohibition against disclosure of reports, exceptions--employment security provided reports upon request.

192.2500. 1. Reports confidential under section [198.070](#) and sections [192.2475](#) to [192.2490](#) shall not be deemed a public record and shall not be subject to the provisions of section [109.180](#) or chapter 610. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

- (1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his or her name;
- (2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;
- (3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section [198.039](#);

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

(6) Release of a name is requested for the purpose of licensure under chapter 210.

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

(L. 1992 S.B. 573 & 634, A.L. 2003 S.B. 556 & 311, A.L. 2014 H.B. 1299 Revision § 192.1112 merged with S.B. 491 § 197.1040)

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