

SECOND REGULAR SESSION

HOUSE BILL NO. 2221

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS (6).

4686H.011

AN ACT

To repeal sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, and to enact in lieu thereof seven new sections relating to vulnerable persons, with penalty provisions.

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

Section A. Sections 191.900, 191.905, 208.909, 565.184, and 630.155, RSMo, are
2 repealed and seven new sections enacted in lieu thereof, to be known as sections 191.900,
3 191.905, 191.2290, 208.909, 565.184, 630.155, and 630.202, to read as follows:

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

- 2 (1) "Abuse", the infliction of physical, sexual or emotional harm or injury. "Abuse"
3 includes the taking, obtaining, using, transferring, concealing, appropriating or taking
4 possession of property of another person without such person's consent;
- 5 (2) "Claim", any attempt to cause a health care payer to make a health care payment;
- 6 (3) "False", wholly or partially untrue. A false statement or false representation of a
7 material fact means the failure to reveal material facts in a manner which is intended to
8 deceive a health care payer with respect to a claim;
- 9 (4) "Health care", any service, assistance, care, product, device or thing provided
10 pursuant to a medical assistance program, or for which payment is requested or received, in
11 whole or part, pursuant to a medical assistance program;
- 12 (5) "Health care payer", a medical assistance program, or any person reviewing,
13 adjusting, approving or otherwise handling claims for health care on behalf of or in
14 connection with a medical assistance program;

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

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

17 (7) "Health care provider", any person delivering, or purporting to deliver, any health
18 care, and including any employee, agent or other representative of such a person, and further
19 including any employee, representative, or subcontractor of the state of Missouri delivering,
20 purporting to deliver, or arranging for the delivery of any health care;

21 (8) "Knowing" and "knowingly", that a person, with respect to information:

22 (a) Has actual knowledge of the information;

23 (b) Acts in deliberate ignorance of the truth or falsity of the information; or

24 (c) Acts in reckless disregard of the truth or falsity of the information.

25

26 Use of the terms knowing or knowingly shall be construed to include the term "intentionally",
27 which means that a person, with respect to information, intended to act in violation of the law;

28 (9) "Medical assistance program", MO HealthNet, or any program to provide or
29 finance health care to participants which is established pursuant to title 42 of the United States
30 Code, any successor federal health insurance program, or a waiver granted thereunder. A
31 medical assistance program may be funded either solely by state funds or by state and federal
32 funds jointly. The term "medical assistance program" shall include the medical assistance
33 program provided by section 208.151, et seq., and any state agency or agencies administering
34 all or any part of such a program;

35 (10) **"Neglect", the failure to provide to a person receiving health care the care,**
36 **goods, or services that are reasonable and necessary to maintain the physical and mental**
37 **health of such person when such failure presents either an imminent danger to the**
38 **health, safety, or welfare of the person or a substantial probability that death or serious**
39 **physical harm would result;**

40 (11) "Person", a natural person, corporation, partnership, association or any legal
41 entity.

191.905. 1. No health care provider shall knowingly make or cause to be made a
2 false statement or false representation of a material fact in order to receive a health care
3 payment, including but not limited to:

4 (1) Knowingly presenting to a health care payer a claim for a health care payment that
5 falsely represents that the health care for which the health care payment is claimed was
6 medically necessary, if in fact it was not;

7 (2) Knowingly concealing the occurrence of any event affecting an initial or
8 continued right under a medical assistance program to have a health care payment made by a
9 health care payer for providing health care;

10 (3) Knowingly concealing or failing to disclose any information with the intent to
11 obtain a health care payment to which the health care provider or any other health care
12 provider is not entitled, or to obtain a health care payment in an amount greater than that
13 which the health care provider or any other health care provider is entitled;

14 (4) Knowingly presenting a claim to a health care payer that falsely indicates that any
15 particular health care was provided to a person or persons, if in fact health care of lesser value
16 than that described in the claim was provided.

17 2. No person shall knowingly solicit or receive any remuneration, including any
18 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind in
19 return for:

20 (1) Referring another person to a health care provider for the furnishing or arranging
21 for the furnishing of any health care; or

22 (2) Purchasing, leasing, ordering or arranging for or recommending purchasing,
23 leasing or ordering any health care.

24 3. No person shall knowingly offer or pay any remuneration, including any kickback,
25 bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to
26 induce such person to refer another person to a health care provider for the furnishing or
27 arranging for the furnishing of any health care.

28 4. Subsections 2 and 3 of this section shall not apply to a discount or other reduction
29 in price obtained by a health care provider if the reduction in price is properly disclosed and
30 appropriately reflected in the claim made by the health care provider to the health care payer,
31 or any amount paid by an employer to an employee for employment in the provision of health
32 care.

33 5. Exceptions to the provisions of subsections 2 and 3 of this section shall be provided
34 for as authorized in 42 U.S.C. Section 1320a-7b(3)(E), as may be from time to time amended,
35 and regulations promulgated pursuant thereto.

36 6. No person shall knowingly abuse **or neglect** a person receiving health care.

37 7. A person who violates subsections 1 to 3 of this section is guilty of a class D felony
38 upon his or her first conviction, and shall be guilty of a class B felony upon his or her second
39 and subsequent convictions. Any person who has been convicted of such violations shall be
40 referred to the Office of Inspector General within the United States Department of Health and
41 Human Services. The person so referred shall be subject to the penalties provided for under
42 42 U.S.C. Chapter 7, Subchapter XI, Section 1320a-7. A prior conviction shall be pleaded
43 and proven as provided by section 558.021. A person who violates subsection 6 of this
44 section shall be guilty of a class D felony, unless the act involves no physical, sexual or
45 emotional harm or injury and the value of the property involved is less than five hundred
46 dollars, in which event a violation of subsection 6 of this section is a class A misdemeanor.

47 8. Any natural person who willfully prevents, obstructs, misleads, delays, or attempts
48 to prevent, obstruct, mislead, or delay the communication of information or records relating to
49 a violation of sections 191.900 to 191.910 is guilty of a class E felony.

50 9. Each separate false statement or false representation of a material fact proscribed
51 by subsection 1 of this section or act proscribed by subsection 2 or 3 of this section shall
52 constitute a separate offense and a separate violation of this section, whether or not made at
53 the same or different times, as part of the same or separate episodes, as part of the same
54 scheme or course of conduct, or as part of the same claim.

55 10. In a prosecution pursuant to subsection 1 of this section, circumstantial evidence
56 may be presented to demonstrate that a false statement or claim was knowingly made. Such
57 evidence of knowledge may include but shall not be limited to the following:

58 (1) A claim for a health care payment submitted with the health care provider's actual,
59 facsimile, stamped, typewritten or similar signature on the claim for health care payment;

60 (2) A claim for a health care payment submitted by means of computer billing tapes
61 or other electronic means;

62 (3) A course of conduct involving other false claims submitted to this or any other
63 health care payer.

64 11. Any person convicted of a violation of this section, in addition to any fines,
65 penalties or sentences imposed by law, shall be required to make restitution to the federal and
66 state governments, in an amount at least equal to that unlawfully paid to or by the person, and
67 shall be required to reimburse the reasonable costs attributable to the investigation and
68 prosecution pursuant to sections 191.900 to 191.910. All of such restitution shall be paid and
69 deposited to the credit of the "MO HealthNet Fraud Reimbursement Fund", which is hereby
70 established in the state treasury. Moneys in the MO HealthNet fraud reimbursement fund
71 shall be divided and appropriated to the federal government and affected state agencies in
72 order to refund moneys falsely obtained from the federal and state governments. All of such
73 cost reimbursements attributable to the investigation and prosecution shall be paid and
74 deposited to the credit of the "MO HealthNet Fraud Prosecution Revolving Fund", which is
75 hereby established in the state treasury. Moneys in the MO HealthNet fraud prosecution
76 revolving fund may be appropriated to the attorney general, or to any prosecuting or circuit
77 attorney who has successfully prosecuted an action for a violation of sections 191.900 to
78 191.910 and been awarded such costs of prosecution, in order to defray the costs of the
79 attorney general and any such prosecuting or circuit attorney in connection with their duties
80 provided by sections 191.900 to 191.910. No moneys shall be paid into the MO HealthNet
81 fraud protection revolving fund pursuant to this subsection unless the attorney general or
82 appropriate prosecuting or circuit attorney shall have commenced a prosecution pursuant to
83 this section, and the court finds in its discretion that payment of attorneys' fees and

84 investigative costs is appropriate under all the circumstances, and the attorney general and
85 prosecuting or circuit attorney shall prove to the court those expenses which were reasonable
86 and necessary to the investigation and prosecution of such case, and the court approves such
87 expenses as being reasonable and necessary. Any moneys remaining in the MO HealthNet
88 fraud reimbursement fund after division and appropriation to the federal government and
89 affected state agencies shall be used to increase MO HealthNet provider reimbursement until
90 it is at least one hundred percent of the Medicare provider reimbursement rate for comparable
91 services. The provisions of section 33.080 notwithstanding, moneys in the MO HealthNet
92 fraud prosecution revolving fund shall not lapse at the end of the biennium.

93 12. A person who violates subsections 1 to 3 of this section shall be liable for a civil
94 penalty of not less than five thousand dollars and not more than ten thousand dollars for each
95 separate act in violation of such subsections, plus three times the amount of damages which
96 the state and federal government sustained because of the act of that person, except that the
97 court may assess not more than two times the amount of damages which the state and federal
98 government sustained because of the act of the person, if the court finds:

99 (1) The person committing the violation of this section furnished personnel employed
100 by the attorney general and responsible for investigating violations of sections 191.900 to
101 191.910 with all information known to such person about the violation within thirty days after
102 the date on which the defendant first obtained the information;

103 (2) Such person fully cooperated with any government investigation of such
104 violation; and

105 (3) At the time such person furnished the personnel ~~of~~ **employed by** the attorney
106 general with the information about the violation, no criminal prosecution, civil action, or
107 administrative action had commenced with respect to such violation, and the person did not
108 have actual knowledge of the existence of an investigation into such violation.

109 13. Upon conviction pursuant to this section, the prosecution authority shall provide
110 written notification of the conviction to all regulatory or disciplinary agencies with authority
111 over the conduct of the defendant health care provider.

112 14. The attorney general may bring a civil action against any person who shall receive
113 a health care payment as a result of a false statement or false representation of a material fact
114 made or caused to be made by that person. The person shall be liable for up to double the
115 amount of all payments received by that person based upon the false statement or false
116 representation of a material fact, and the reasonable costs attributable to the prosecution of the
117 civil action. All such restitution shall be paid and deposited to the credit of the MO HealthNet
118 fraud reimbursement fund, and all such cost reimbursements shall be paid and deposited to
119 the credit of the MO HealthNet fraud prosecution revolving fund. No reimbursement of such
120 costs attributable to the prosecution of the civil action shall be made or allowed except with

121 the approval of the court having jurisdiction of the civil action. No civil action provided by
122 this subsection shall be brought if restitution and civil penalties provided by subsections 11
123 and 12 of this section have been previously ordered against the person for the same cause of
124 action.

125 15. Any person who discovers a violation by himself or herself or such person's
126 organization and who reports such information voluntarily before such information is public
127 or known to the attorney general shall not be prosecuted for a criminal violation.

**191.2290. 1. The provisions of this section and section 630.202 shall be known
2 and may be cited as the "Essential Caregiver Program Act".**

3 2. As used in this section, the following terms mean:

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

**5 (2) "Essential caregiver", a family member, friend, guardian, or other individual
6 selected by a facility resident, or the guardian or legal representative of the resident;**

**7 (3) "Facility", a hospital licensed under chapter 197 or a facility licensed under
8 chapter 198.**

**9 3. During a state of emergency declared under chapter 44, a facility shall allow a
10 resident, a resident's guardian, or a resident's legally authorized representative to
11 designate an essential caregiver for in-person visitation with the resident in accordance
12 with the standards and guidelines developed by the department under this section. This
13 policy shall be known as the "Essential Caregiver Program".**

**14 4. The facility shall inform, in writing, residents, or guardians or legal
15 representatives of residents, of the essential caregiver program established under
16 subsection 3 of this section and the process for designating an essential caregiver.**

**17 5. The department shall develop standards and guidelines concerning the
18 essential caregiver program including, but not limited to, the following:**

**19 (1) The facility shall allow at least two individuals per resident to be designated
20 as essential caregivers, although the facility may limit the visitation to one caregiver at a
21 time. The caregiver shall not be required to have previously served in a caregiver
22 capacity prior to the declared state of emergency;**

**23 (2) The facility shall establish a visitation schedule to allow the essential
24 caregiver to visit the resident for at least four hours each day; and**

**25 (3) The facility shall establish procedures to enable physical contact between the
26 resident and the essential caregiver. The facility shall not require the essential caregiver
27 to undergo screening, testing, hygiene, personal protective equipment, or other infection
28 control and prevention protocols more stringent than those required of facility
29 employees. The facility may restrict or revoke visitation by an essential caregiver who
30 fails to follow required protocols established under this subdivision.**

31 **6. A facility may request from the department a suspension of in-person**
32 **visitation by essential caregivers for a period not to exceed seven days. The department**
33 **may deny the facility's request to suspend visitation if the department determines that**
34 **in-person visitation does not pose a serious community health risk. A facility may**
35 **request from the department an extension of a suspension for more than seven days;**
36 **provided that, the department shall not extend a suspension period for longer than**
37 **seven days at a time. A facility shall not suspend in-person essential caregiver visitation**
38 **for more than fourteen consecutive days in a twelve-month period or for more than**
39 **forty-five total days in a twelve-month period.**

40 **7. The provisions of this section shall not be construed to require an essential**
41 **caregiver to provide necessary care to a resident, and a facility shall not require an**
42 **essential caregiver to provide necessary care.**

43 **8. A facility, its employees, and its contractors shall be immune from civil**
44 **liability for an injury or harm caused by or resulting from:**

45 **(1) Exposure to a contagious disease or other harmful agent that is specified**
46 **during the state of emergency declared under chapter 44; or**

47 **(2) Acts or omissions by essential caregivers who are present in the facility**
48

49 **as a result of the implementation of the essential caregiver program under this section.**
50 **The immunity described in this subsection shall not apply to any act or omission that**
51 **constitutes recklessness or willful misconduct.**

208.909. 1. Consumers receiving personal care assistance services shall be
2 responsible for:

3 (1) Supervising their personal care attendant;

4 (2) Verifying wages to be paid to the personal care attendant;

5 (3) Preparing and submitting time sheets, signed by both the consumer and personal
6 care attendant, to the vendor on a biweekly basis;

7 (4) Promptly notifying the department within ten days of any changes in
8 circumstances affecting the personal care assistance services plan or in the consumer's
9 place of residence;

10 (5) Reporting any problems resulting from the quality of services rendered by the
11 personal care attendant to the vendor. If the consumer is unable to resolve any problems
12 resulting from the quality of service rendered by the personal care attendant with the vendor,
13 the consumer shall report the situation to the department;

14 (6) Providing the vendor with all necessary information to complete required
15 paperwork for establishing the employer identification number;

16 (7) Allowing the vendor to comply with its quality assurance and supervision process,
17 which shall include, but not be limited to, annual face-to-face home visits and monthly case
18 management activities; and

19 (8) Reporting to the department significant changes in their health and ability to self-
20 direct care.

21 2. Participating vendors shall be responsible for:

22 (1) Collecting time sheets or reviewing reports of delivered services and certifying
23 the accuracy thereof;

24 (2) The Medicaid reimbursement process, including the filing of claims and reporting
25 data to the department as required by rule;

26 (3) Transmitting the individual payment directly to the personal care attendant on
27 behalf of the consumer;

28 (4) **Ensuring all payroll, employment, and other taxes are paid timely;**

29 (5) Monitoring the performance of the personal care assistance services plan. Such
30 monitoring shall occur during the annual face-to-face home visit under section 208.918. The
31 vendor shall document whether services are being provided to the consumer as set forth in the
32 plan of care. If the attendant was not providing services as set forth in the plan of care, the
33 vendor shall notify the department and the department may suspend services to the consumer;
34 and

35 [~~5~~] (6) Reporting to the department significant changes in the consumer's health or
36 ability to self-direct care.

37 3. No state or federal financial assistance shall be authorized or expended to pay for
38 services provided to a consumer under sections 208.900 to 208.927, if the primary benefit of
39 the services is to the household unit, or is a household task that the members of the
40 consumer's household may reasonably be expected to share or do for one another when they
41 live in the same household, unless such service is above and beyond typical activities
42 household members may reasonably provide for another household member without a
43 disability.

44 4. No state or federal financial assistance shall be authorized or expended to pay for
45 personal care assistance services provided by a personal care attendant who has not
46 undergone the background screening process under section 192.2495. If the personal care
47 attendant has a disqualifying finding under section 192.2495, no state or federal assistance
48 shall be made, unless a good cause waiver is first obtained from the department in accordance
49 with section 192.2495.

50 5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a telephone tracking
51 system for the purpose of reporting and verifying the delivery of consumer-directed services
52 as authorized by the department of health and senior services or its designee. The telephone

53 tracking system shall be used to process payroll for employees and for submitting claims for
54 reimbursement to the MO HealthNet division. At a minimum, the telephone tracking system
55 shall:

- 56 (a) Record the exact date services are delivered;
- 57 (b) Record the exact time the services begin and exact time the services end;
- 58 (c) Verify the telephone number from which the services are registered;
- 59 (d) Verify that the number from which the call is placed is a telephone number unique
60 to the client;
- 61 (e) Require a personal identification number unique to each personal care attendant;
- 62 (f) Be capable of producing reports of services delivered, tasks performed, client
63 identity, beginning and ending times of service and date of service in summary fashion that
64 constitute adequate documentation of service; and
- 65 (g) Be capable of producing reimbursement requests for consumer approval that
66 assures accuracy and compliance with program expectations for both the consumer and
67 vendor.

68 (2) As new technology becomes available, the department may allow use of a more
69 advanced tracking system, provided that such system is at least as capable of meeting the
70 requirements of this subsection.

71 (3) The department of health and senior services shall promulgate by rule the
72 minimum necessary criteria of the telephone tracking system. Any rule or portion of a rule, as
73 that term is defined in section 536.010, that is created under the authority delegated in this
74 section shall become effective only if it complies with and is subject to all of the provisions of
75 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
76 nonseverable and if any of the powers vested with the general assembly pursuant to chapter
77 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
78 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
79 adopted after August 28, 2010, shall be invalid and void.

80 **6. The vendor shall be liable to the consumer for any garnishment action**
81 **occurring or that has occurred as a result of the vendor's failure to timely pay payroll,**
82 **employment, or other taxes on behalf of the consumer under subsection 2 of this section.**
83 **The vendor shall notify the consumer of any communication or correspondence from**
84 **any federal, state, or local tax authority of any overdue or unpaid tax obligation, as well**
85 **as any notice of an impending garnishment.**

565.184. 1. A person commits the offense of abuse of an elderly person, a person
2 with a disability, or a vulnerable person if he or she:

- 3 (1) Purposely engages in conduct involving more than one incident that causes
4 emotional distress to an elderly person, a person with a disability, or a vulnerable person. The

5 course of conduct shall be such as would cause a reasonable elderly person, person with a
6 disability, or vulnerable person to suffer substantial emotional distress; or

7 (2) Intentionally fails to provide care, goods or services to an elderly person, a person
8 with a disability, or a vulnerable person. The result of the conduct shall be such as would
9 cause a reasonable elderly person, person with a disability, or vulnerable person to suffer
10 physical or emotional distress; or

11 (3) Knowingly acts or knowingly fails to act in a manner which results in a
12 substantial risk to the life, body or health of an elderly person, a person with a disability, or a
13 vulnerable person.

14 2. The offense of abuse of an elderly person, a person with a disability, or a
15 vulnerable person is a class ~~[A misdemeanor]~~ **D felony**. Nothing in this section shall be
16 construed to mean that an elderly person, a person with a disability, or a vulnerable person is
17 abused solely because such person chooses to rely on spiritual means through prayer, in lieu
18 of medical care, for his or her health care, as evidence by such person's explicit consent,
19 advance directive for health care, or practice.

630.155. 1. A person commits the offense of patient, resident or client abuse or
2 neglect against any person admitted on a voluntary or involuntary basis to any mental health
3 facility or mental health program in which people may be civilly detained pursuant to chapter
4 632, or any patient, resident or client of any residential facility, day program or specialized
5 service operated, funded or licensed by the department if he knowingly does any of the
6 following:

7 (1) Beats, strikes or injures any person, patient, resident or client;

8 (2) Mistreats or maltreats, handles or treats any such person, patient, resident or client
9 in a brutal or inhuman manner;

10 (3) Uses any more force than is reasonably necessary for the proper control, treatment
11 or management of such person, patient, resident or client;

12 (4) Fails to provide services which are reasonable and necessary to maintain the
13 physical and mental health of any person, patient, resident or client when such failure presents
14 either an imminent danger to the health, safety or welfare of the person, patient, resident or
15 client, or a substantial probability that death or serious physical harm will result.

16 2. Patient, resident or client abuse or neglect is a class A misdemeanor unless
17 committed under subdivision (2) or (4) of subsection 1 of this section in which case such
18 abuse or neglect shall be a class ~~[E]~~ **D felony**.

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

2 **(1) "Department", the department of mental health;**

3 **(2) "Essential caregiver", a family member, friend, guardian, or other individual**
4 **selected by a facility resident, or the guardian or legal representative of the resident;**

5 (3) "Facility", a residential facility licensed by the department under this
6 chapter.

7 2. During a state of emergency declared under chapter 44, a facility shall allow a
8 resident, a resident's guardian, or a resident's legally authorized representative to
9 designate an essential caregiver for in-person visitation with the resident in accordance
10 with the standards and guidelines developed by the department under this section. This
11 policy shall be known as the "Essential Caregiver Program".

12 3. The facility shall inform, in writing, residents, or guardians or legal
13 representatives of residents, of the essential caregiver program established under
14 subsection 2 of this section and the process for designating an essential caregiver.

15 4. The department shall develop standards and guidelines concerning the
16 essential caregiver program including, but not limited to, the following:

17 (1) The facility shall allow at least two individuals per resident to be designated
18 as essential caregivers, although the facility may limit the visitation to one caregiver at a
19 time. The caregiver shall not be required to have previously served in a caregiver
20 capacity prior to the declared state of emergency;

21 (2) The facility shall establish a visitation schedule to allow the essential
22 caregiver to visit the resident for at least four hours each day; and

23 (3) The facility shall establish procedures to enable physical contact between the
24 resident and the essential caregiver. The facility shall not require the essential caregiver
25 to undergo screening, testing, hygiene, personal protective equipment, or other infection
26 control and prevention protocols more stringent than those required of facility
27 employees. The facility may restrict or revoke visitation by an essential caregiver who
28 fails to follow required protocols established under this subdivision.

29 5. A facility may request from the department a suspension of in-person
30 visitation by essential caregivers for a period not to exceed seven days. The department
31 may deny the facility's request to suspend visitation if the department determines that
32 in-person visitation does not pose a serious community health risk. A facility may
33 request from the department an extension of a suspension for more than seven days;
34 provided that, the department shall not extend a suspension period for longer than
35 seven days at a time. A facility shall not suspend in-person essential caregiver visitation
36 for more than fourteen consecutive days in a twelve-month period or for more than
37 forty-five total days in a twelve-month period.

38 6. The provisions of this section shall not be construed to require an essential
39 caregiver to provide necessary care to a resident, and a facility shall not require an
40 essential caregiver to provide necessary care.

41 **7. A facility, its employees, and its contractors shall be immune from civil**
42 **liability for an injury or harm caused by or resulting from:**

43 **(1) Exposure to a contagious disease or other harmful agent that is specified**
44 **during the state of emergency declared under chapter 44; or**

45 **(2) Acts or omissions by essential caregivers who are present in the facility**

46

47 **as a result of the implementation of the essential caregiver program under this section.**

48 **The immunity described in this subsection shall not apply to any act or omission that**

49 **constitutes recklessness or willful misconduct.**

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