

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 316
93RD GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, March 17, 2005, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1081S.03C

AN ACT

To repeal sections 192.665, 192.667, 197.121, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, and 197.235, RSMo, and to enact in lieu thereof eighteen new sections relating to health care providers, with a penalty provision.

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

Section A. Sections 192.665, 192.667, 197.121, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, and 197.235, RSMo, are repealed and eighteen new sections enacted in lieu thereof, to be known as sections 192.665, 192.667, 197.121, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, 197.232, 197.235, 375.939, 1, 2, 3, 4, and 5, to read as follows:

192.665. As used in this section, section 192.667, and sections 197.150 to 197.165, RSMo, the following terms mean:

(1) **"Ambulatory surgical center", as defined in subdivision (2) of section 197.200, RSMo;**

(2) **"Charge data", information submitted by health care providers on current charges for leading procedures and diagnoses;**

[(2)] (3) **"Charges by payer", information submitted by [hospitals] health care providers on amount billed to Medicare, Medicaid, other government sources and all nongovernment sources combined as one data element;**

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

[(4)] (5) **"Financial data", information submitted by hospitals drawn from financial statements which includes the balance sheet, income statement, charity**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

care and bad debt and charges by payer, prepared in accordance with generally accepted accounting principles. **If financial data is reported by ambulatory medical treatment centers under subsection 1 of section 192.667, such data shall include revenues, expenses, charity care, bad debt, and charges by payor but exclude information to publicly disclose net income to an individual owner or shareholder;**

[(5)] (6) "Health care provider", hospitals as defined in section 197.020, RSMo, and ambulatory [surgical] **medical treatment** centers as defined in section 197.200, RSMo;

[(6)] (7) "Nosocomial infection", as defined by the national Centers for Disease Control and Prevention and applied to infections within hospitals, ambulatory surgical centers, and other facilities;

[(7)] (8) "Nosocomial infection incidence rate", a risk-adjusted measurement of new cases of nosocomial infections by procedure or device within a population over a given period of time, with such measurements defined by rule of the department pursuant to subsection 3 of section 192.667 for use by all hospitals, ambulatory surgical centers, and other facilities in complying with the requirements of the Missouri nosocomial infection control act of 2004;

[(8)] (9) "Other facility", a type of facility determined to be a source of infections and designated by rule of the department pursuant to subsection 11 of section 192.667;

[(9)] (10) "Patient abstract data", data submitted by [hospitals] **health care providers** which includes but is not limited to date of birth, sex, race, zip code, county of residence, admission date, discharge date, principal and other diagnoses, including external causes, principal and other procedures, procedure dates, total billed charges, disposition of the patient and expected source of payment with sources categorized according to Medicare, Medicaid, other government, workers' compensation, all commercial payors coded with a common code, self-pay, no charge and other.

192.667. 1. All health care providers shall at least annually provide to the department charge data as required by the department. All hospitals shall at least annually provide patient abstract data and financial data as required by the department. Hospitals as defined in section 197.020, RSMo, shall report patient abstract data for outpatients and inpatients. [Within one year of August 28, 1992,] Ambulatory [surgical] **medical treatment** centers as defined in section 197.200, RSMo, shall provide patient abstract data **as filed on claim forms** to

the department. **On or after January 1, 2008, the department of health and senior services may promulgate regulations providing for mandatory reporting of financial data by one or more subcategories of ambulatory medical treatment centers if a private sector system of reporting financial data on a voluntary basis has not been established for such centers.** The department shall specify by rule the types of information which shall be submitted and the method of submission.

2. The department shall collect data on required nosocomial infection incidence rates from hospitals, ambulatory surgical centers, and other facilities as necessary to generate the reports required by this section. Hospitals, ambulatory surgical centers, and other facilities shall provide such data in compliance with this section.

3. No later than July 1, 2005, the department shall promulgate rules specifying the standards and procedures for the collection, analysis, risk adjustment, and reporting of nosocomial infection incidence rates and the types of infections and procedures to be monitored pursuant to subsection 12 of this section. In promulgating such rules, the department shall:

(1) Use methodologies and systems for data collection established by the federal Centers for Disease Control and Prevention National Nosocomial Infection Surveillance System, or its successor; and

(2) Consider the findings and recommendations of the infection control advisory panel established pursuant to section 197.165, RSMo.

4. The infection control advisory panel created by section 197.165, RSMo, shall make a recommendation to the department regarding the appropriateness of implementing all or part of the nosocomial infection data collection, analysis, and public reporting requirements of this act by authorizing hospitals, ambulatory surgical centers, and other facilities to participate in the federal Centers for Disease Control and Prevention's National Nosocomial Infection Surveillance System, or its successor. The advisory panel shall consider the following factors in developing its recommendation:

(1) Whether the public is afforded the same or greater access to facility-specific infection control indicators and rates than would be provided under subsections 2, 3, and 6 to 12 of this section;

(2) Whether the data provided to the public are subject to the same or greater accuracy of risk adjustment than would be provided under subsections 2, 3, and 6 to 12 of this section;

(3) Whether the public is provided with the same or greater specificity of reporting of infections by type of facility infections and procedures than would be provided under subsections 2, 3, and 6 to 12 of this section;

(4) Whether the data are subject to the same or greater level of confidentiality of the identity of an individual patient than would be provided under subsections 2, 3, and 6 to 12 of this section;

(5) Whether the National Nosocomial Infection Surveillance System, or its successor, has the capacity to receive, analyze, and report the required data for all facilities;

(6) Whether the cost to implement the nosocomial infection data collection and reporting system is the same or less than under subsections 2, 3, and 6 to 12 of this section.

5. Based on the affirmative recommendation of the infection control advisory panel, and provided that the requirements of subsection 12 of this section can be met, the department may or may not implement the federal Centers for Disease Control and Prevention Nosocomial Infection Surveillance System, or its successor, as an alternative means of complying with the requirements of subsections 2, 3, and 6 to 12 of this section. If the department chooses to implement the use of the federal Centers for Disease Control Prevention Nosocomial Infection Surveillance System, or its successor, as an alternative means of complying with the requirements of subsections 2, 3, and 6 to 12 of this section, it shall be a condition of licensure for hospitals and ambulatory surgical centers which opt to participate in the federal program to permit the federal program to disclose facility-specific data to the department as necessary to provide the public reports required by the department. Any hospital or ambulatory surgical center which does not voluntarily participate in the National Nosocomial Infection Surveillance System, or its successor, shall be required to abide by all of the requirements of subsections 2, 3, and 6 to 12 of this section.

6. The department shall not require the resubmission of data which has been submitted to the department of health and senior services or the department of social services under any other provision of law. The department of health and senior services shall accept data submitted by associations or related organizations on behalf of health care providers by entering into binding agreements negotiated with such associations or related organizations to obtain data required pursuant to section 192.665 and this section. A health care

provider shall submit the required information to the department of health and senior services:

(1) If the provider does not submit the required data through such associations or related organizations; **or**

(2) [If no binding agreement has been reached within ninety days of August 28, 1992, between the department of health and senior services and such associations or related organizations; or

(3)] If a binding agreement has expired for more than ninety days.

7. Information obtained by the department under the provisions of section 192.665 and this section shall not be public information. Reports and studies prepared by the department based upon such information shall be public information and may identify individual health care providers. The department of health and senior services may authorize the use of the data by other research organizations pursuant to the provisions of section 192.067. The department shall not use or release any information provided under section 192.665 and this section which would enable any person to determine any health care provider's negotiated discounts with specific preferred provider organizations or other managed care organizations. The department shall not release data in a form which could be used to identify a patient. Any violation of this subsection is a class A misdemeanor.

8. The department shall undertake a reasonable number of studies and publish information, including at least an annual consumer guide, in collaboration with health care providers, business coalitions and consumers based upon the information obtained pursuant to the provisions of section 192.665 and this section. The department shall allow all health care providers and associations and related organizations who have submitted data which will be used in any report to review and comment on the report prior to its publication or release for general use. The department shall include any comments of a health care provider, at the option of the provider, and associations and related organizations in the publication if the department does not change the publication based upon those comments. The report shall be made available to the public for a reasonable charge.

9. Any health care provider which continually and substantially, as these terms are defined by rule, fails to comply with the provisions of this section shall not be allowed to participate in any program administered by the state or to receive any moneys from the state.

10. A hospital, as defined in section 197.020, RSMo, aggrieved by the department's determination of ineligibility for state moneys pursuant to subsection 9 of this section may appeal as provided in section 197.071, RSMo. An ambulatory [surgical] **medical treatment** center as defined in section 197.200, RSMo, aggrieved by the department's determination of ineligibility for state moneys pursuant to subsection 9 of this section may appeal as provided in section 197.221, RSMo.

11. The department of health may promulgate rules providing for collection of data and publication of nosocomial infection incidence rates for other types of health facilities determined to be sources of infections; except that, physicians' offices shall be exempt from reporting and disclosure of infection incidence rates.

12. In consultation with the infection control advisory panel established pursuant to section 197.165, RSMo, the department shall develop and disseminate to the public reports based on data compiled for a period of twelve months. Such reports shall be updated quarterly and shall show for each hospital, ambulatory surgical center, and other facility a risk-adjusted nosocomial infection incidence rate for the following types of infection:

- (1) Class I surgical site infections;
- (2) Ventilator-associated pneumonia;
- (3) Central line-related bloodstream infections;
- (4) Other categories of infections that may be established by rule by the

department.

The department, in consultation with the advisory panel, shall be authorized to collect and report data on subsets of each type of infection described in this subsection.

13. In the event the provisions of this act are implemented by requiring hospitals, ambulatory surgical centers, and other facilities to participate in the federal Centers for Disease Control and Prevention National Nosocomial Infection Surveillance System, or its successor, the types of infections to be publicly reported shall be determined by the department by rule and shall be consistent with the infections tracked by the National Nosocomial Infection Surveillance System, or its successor.

14. Reports published pursuant to subsection 12 of this section shall be published on the department's Internet web site. The initial report shall be issued by the department not later than December 31, 2006. The reports shall

be distributed at least annually to the governor and members of the general assembly.

15. The Hospital Industry Data Institute shall publish a report of Missouri hospitals' and ambulatory surgical centers' compliance with standardized quality of care measures established by the federal Centers for Medicare and Medicaid Services for prevention of infections related to surgical procedures. If the Hospital Industry Data Institute fails to do so by July 31, 2008, and annually thereafter, the department shall be authorized to collect information from the Centers for Medicare and Medicaid Services or from hospitals and ambulatory surgical centers and publish such information in accordance with subsection 14 of this section.

16. The data collected or published pursuant to this section shall be available to the department for purposes of licensing hospitals and ambulatory surgical centers pursuant to chapter 197, RSMo.

17. The department shall promulgate rules to implement the provisions of section 192.131 and sections 197.150 to 197.160, RSMo. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, 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, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, 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, 2004, shall be invalid and void.

197.121. The department of health and senior services shall not license any entity as a hospital, as the term "hospital" is defined in section 197.020, that is devoted primarily or exclusively to surgical procedures, patients with a cardiac condition, patients with an orthopedic condition, or any other specialized category of patients or cases as may be determined by the director of the department. Nothing in this section shall prohibit licensure or certification of any entity as a hospital that is devoted primarily to care and treatment of children under the age of eighteen years, psychiatric patients, or patients undergoing rehabilitation care or to long-term care hospitals meeting the requirements described in 42 CFR Sec. 412.23(e). The provisions of this section shall expire, and be of no effect, on and after August 28, [2005] **2007**.

197.200. As used in sections 197.200 to 197.240, unless the context clearly indicates otherwise, the following terms mean:

(1) **"Ambulatory medical treatment center", any public or private establishment operated primarily for the purpose of performing or providing one or more of the following: surgical procedures other than laser assisted in situ keratomileusis (LASIK) surgery and dermatological surgery requiring only local anesthesia; childbirths; diagnostic imaging, including computerized tomography, magnetic resonance imaging, and PET technology; cardiac catheterization; lithotripsy; gamma knife treatment; radiation therapy; or endoscopy and which does not provide services or other accommodations for patients to stay more than twenty-three hours within the establishment; provided, however, that nothing in this definition shall be construed to include the offices of dentists currently licensed under chapter 332, RSMo. For purposes of this subdivision, "operated primarily for the purpose of performing or providing" means at least fifty-one percent of either the revenue earned or volume of services provided at that establishment shall be derived from providing one or more of the services identified in this subdivision;**

(2) **"Ambulatory surgical center", a subcategory of ambulatory medical treatment centers which includes any public or private establishment operated primarily for the purpose of performing surgical procedures or primarily for the purpose of performing childbirths, and which does not provide services or other accommodations for patients to stay more than twenty-three hours within the establishment[, provided, however, that nothing in this definition shall be construed to include the offices of dentists currently licensed pursuant to chapter 332, RSMo];**

[(2)] (3) **"Dentist", any person currently licensed to practice dentistry pursuant to chapter 332, RSMo;**

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

[(4)] (5) **"Governmental unit", any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state;**

[(5)] (6) **"Person", any individual, firm, partnership, corporation, company, or association and the legal successors thereof;**

[(6)] (7) **"Physician", any person currently licensed to practice medicine pursuant to chapter 334, RSMo;**

[(7)] (8) "Podiatrist", any person currently licensed to practice podiatry pursuant to chapter 330, RSMo.

197.205. 1. No person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain an ambulatory [surgical] **medical treatment** center in this state without a license under sections 197.200 to 197.240 issued by the department of health and senior services. **The department may establish subcategories of licensure for the various types of ambulatory medical treatment centers described in subdivision (1) of section 197.200.**

2. Nothing in sections 197.200 to 197.240 shall be construed to impair or abridge the authority of a governmental unit to license ambulatory [surgical] **medical treatment** centers, provided that any ordinance of a governmental unit shall require compliance with all rules, regulations, and standards adopted by the department to implement the provisions of sections 197.200 to 197.240.

197.210. 1. Application for a license shall be made to the department upon forms provided by the department and shall contain such information as the department may require. The department of health and senior services may require affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under the provisions of sections 197.200 to 197.240.

2. Each application for a license, except applications from governmental units, shall be accompanied by an annual license fee of [two hundred dollars] **an amount determined by the department to be sufficient to cover the reasonable cost of enforcing sections 197.200 to 197.240.** All license fees shall be deposited in the state treasury to the credit of [general revenue] **the "Ambulatory Medical Treatment Center Fund," which is hereby created in the state treasury. The fund shall be used solely for the purpose of administering the provisions of this act.**

197.215. 1. Upon receipt of an application for a license, the department of health and senior services shall issue a license if the applicant and ambulatory [surgical] **medical treatment** center facilities meet the requirements established under sections 197.200 to 197.240, and have provided affirmative evidence that:

(1) Each member of the surgical **or medical** staff is a physician, dentist or podiatrist currently licensed to practice in Missouri;

(2) [Surgical] **If the applicant provides surgical procedures, childbirths, cardiac catheterization, or endoscopy,** procedures shall be

performed only by physicians, dentists or podiatrists, who at the time are privileged to perform [surgical] **such** procedures in at least one licensed hospital in the **same** community in which the ambulatory [surgical] **medical treatment center** is located, **and makes himself or herself available to provide on-call services at the hospital on the same basis as other similarly credentialed practitioners**, thus providing assurance to the public that patients treated in the center shall receive continuity of care should the services of a hospital be required[;]. Alternatively, **the** applicant shall submit a copy of a current working agreement with at least one licensed hospital in the **same** community in which the ambulatory [surgical] **medical treatment center** is located, guaranteeing the transfer and admittance of patients for emergency **or inpatient** treatment whenever necessary;

(3) **A working agreement described in subdivision (2) of this subsection shall be subject to the approval of the director of the department of health. The parties shall indicate to the director that each of the following elements listed in paragraphs (a) to (d) of this subdivision were considered in the discussions between the parties even though such elements may not be included in the final agreement:**

(a) **A specific plan for access to hospital services for those patients that require a higher level of care than provided by the center;**

(b) **Emergency department access to patient records and physician instructions and orders;**

(c) **Protocols for the transportation of patients from the center to the hospital when a higher level of care is required;**

(d) **Reimbursement to physicians who cover on-call schedules for ambulatory medical treatment center physicians who decline on-call status;**

(4) **Continuous physician services or registered professional nursing services are provided whenever a patient is in the facility;**

[(4)] (5) **Adequate medical records for each patient are to be maintained.**

2. **If the license is being awarded on the basis of the alternative working agreement requirements of subdivisions (2) and (3) of subsection 1 of this section and a hospital and ambulatory treatment center fail to negotiate an approved agreement, the hospital and ambulatory medical treatment center shall enter into binding arbitration based on the rules of the American Arbitration Association.**

A panel of three arbitrators shall be appointed to resolve differences and disputes. Each party to the negotiations shall appoint one arbitrator, and the two arbitrators selected shall appoint a third arbitrator. In the absence of agreement on a third arbitrator, the department shall appoint the third arbitrator. The panel of arbitrators shall address each of the standards that are required by this section to be included in the proposed agreement between the parties. The decisions of the panel of arbitrators shall be final, legally binding, and enforceable by a court of competent jurisdiction. However, if an ambulatory medical treatment center performs treatment services that the affiliated hospital refuses to provide pursuant to section 197.032, the hospital shall be entitled to:

(1) Withhold or restrict hospital medical staff privileges of physicians performing those services at the ambulatory medical treatment center; and

(2) Refuse to enter into or continue a negotiated or arbitrated working agreement with an ambulatory medical treatment center pursuant to this subsection and subdivision (3) of subsection 1 of this section.

3. Upon receipt of an application for a license, or the renewal thereof, the department shall issue or renew the license if the applicant and program meet the requirements established under sections 197.200 to 197.240. Each license shall be issued only for the persons and premises named in the application. A license, unless sooner suspended or revoked, shall be issued for a period of one year.

[3.] 4. Each license shall be issued only for the premises, **services**, and persons or governmental units named in the application, and shall not be transferable or assignable except with the written consent of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

[4.] 5. If, during the period in which an ambulatory **[surgical] medical treatment** center license is in effect, the license holder or operator legally transfers operational responsibilities by any process to another person as defined in section 197.200, an application shall be made for the issuance of a new license to become effective on the transfer date.

6. As used in this section, the term "same community" means:

(1) In a metropolitan statistical area, the same emergency medical services catchment area as defined in the department of health and

senior services' emergency services diversion plan for that area; or

(2) In a nonmetropolitan county containing a hospital, the boundaries of that county, except that a hospital in an adjacent county may be considered to be in the same community if the distance by road is no greater than the distance between the ambulatory medical treatment center and a hospital in the same county; or

(3) In a nonmetropolitan county with no hospital, a county adjacent to the county in which the ambulatory medical treatment center is located.

7. Facilities licensed as ambulatory surgical centers on the effective date of this section shall have the same length of time after the effective date of this section to come into compliance with the provisions of this section as is given to hospitals under section 197.090.

197.220. The department of health and senior services may deny, suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of sections 197.200 to 197.240, or in any case in which the director of the department makes a finding that:

(1) The applicant, or if the applicant is a firm, partnership or association, any of its members, or if a corporation, any of its officers or directors, or the person designated to manage or supervise the facility, has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of an ambulatory [surgical] **medical treatment** center, or for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(2) The licensure status or record of the applicant, or if the applicant is a firm, partnership or association, of any of its members, or if a corporation, of any of its officers or directors, or of the person designated to manage or supervise the facility, from any other state, federal district or land, territory or commonwealth of the United States, or of any foreign country where the applicant has done business in a similar capacity indicates that granting a license to the applicant would be detrimental to the interests of the public.

197.225. 1. The department of health and senior services [may] **shall** adopt such reasonable rules, regulations, and standards for the types of services

provided as are necessary to carry out the provisions of sections 197.200 to 197.240, and to assure quality patient care and patient safety, which shall include, but not be limited to:

(1) Construction of the facility including, but not limited to, plumbing, heating, lighting, and ventilation which should insure the health, safety, comfort, and privacy of patients and protection from fire hazard. **For ambulatory medical treatment centers that were in operation prior to the effective date of this section, the department shall waive enforcement of new or additional construction, life safety or building code requirements until those facilities undergo and complete substantial renovation, refurbishment or replacement of the physical facility. However, nothing in this section shall limit the continued enforcement of construction, life safety or building code standards in effect on the effective date of this section for ambulatory surgical centers licensed on that date;**

(2) Number, qualifications, and organization of all personnel, having responsibility for any part of the care provided to the patients;

(3) Equipment essential to the health, welfare, and safety of the patients;

(4) Facilities, programs, and services to be provided in connection with the care of patients in ambulatory [surgical] **medical treatment** centers; and

(5) Procedures for peer review and for receiving and investigating complaints regarding any ambulatory [surgical] **medical treatment** center or any physician, dentist, podiatrist, nurse, assistant, manager, supervisor, or employee practicing or working in any such facility.

2. Such rules shall be consistent with the following, as applicable:

(1) **Medicare conditions of participation and Medicare conditions of coverage;**

(2) **Standards of the joint commission on accreditation of health organizations; and**

(3) **Standards developed by nationally recognized medical specialty accreditation entities.**

3. Subsection 2 of this section shall not be construed to require the department of health and senior services to promulgate less stringent quality of care standards for ambulatory surgical centers than were in effect on August 1, 2005.

197.230. 1. The department of health and senior services shall make, or cause to be made, such inspections and investigations as it deems

necessary. **However, such inspections shall occur with a frequency that is substantially comparable to the frequency of inspections of hospitals.** The department may delegate its powers and duties to investigate and inspect ambulatory [surgical] **medical treatment** centers to an official of a political subdivision having a population of at least four hundred fifty thousand if such political subdivision is deemed qualified by the department to inspect and investigate ambulatory [surgical] **medical treatment** centers. The official so designated shall submit a written report of his findings to the department and the department may accept the recommendations of such official if it determines that the facility inspected meets minimum standards established pursuant to sections 197.200 to 197.240.

2. The department of health shall accept reports of ambulatory medical treatment center inspections from governmental agencies and recognized accrediting organizations in whole or in part for licensure purposes if:

(1) **The inspection is comparable to an inspection performed by the department of health and senior services;**

(2) **The ambulatory medical treatment center meets minimum licensure standards; and**

(3) **The inspection was conducted within one year of the date of license renewal.**

3. The department of health and senior services shall attempt to schedule inspections and evaluations required by this section so that an ambulatory medical treatment center will not be subject to more than one inspection in any twelve-month period from the department of health and senior services or any agency or accreditation organization whose reports are accepted for licensure purposes under this section, except for good cause shown.

197.232. In enforcing the requirements of sections 197.200 to 197.240, the department shall not conduct inspections or other compliance verification measures that would duplicate certification or accreditation standards as described in subsection 2 of 197.225 to which the ambulatory medical treatment center is subject and in compliance. However, nothing in this section shall be construed to preclude inspections or compliance verification as needed to investigate patient complaints made in good faith regarding quality of care or

patient safety.

197.235. 1. Any person operating, conducting, managing, or establishing an ambulatory [surgical] **medical treatment** center without a license required by sections 197.200 to 197.240 is guilty of a class A misdemeanor and, upon conviction, shall be subject to a fine of not more than five hundred dollars. Each day of continuing violation shall constitute a separate offense.

2. The attorney general shall represent the department of health and senior services and shall institute an action in the name of the state for injunctive or other relief against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an ambulatory [surgical] **medical treatment** center without a license issued pursuant to the provisions of sections 197.200 to 197.240.

3. Any person operating, conducting, managing, or establishing an ambulatory [surgical] **medical treatment** center who, in the course of advertising, promoting, or otherwise publicizing the activities, business, location, or any other matter concerning the operations of said ambulatory [surgical] **medical treatment** center, uses or employs in any manner the words "State, Missouri, State of Missouri, Department of Health and Senior Services, the initials 'Mo.'," or any emblem of the state of Missouri or the department of health and senior services, for the purpose of conveying or in any manner reasonably calculated to convey the false impression that the state of Missouri or any department, agency, bureau, or instrumentality thereof is involved in the business of said ambulatory [surgical] **medical treatment** center, or took part in said advertisement, promotion, publicity, or other statement, shall be subject to a fine of one hundred dollars per day for each day during the period beginning with the day said advertisement, promotion, publication, or statement first appears and ending on the day on which it is withdrawn.

375.939. 1. A health care provider, as defined in section 376.1350, RSMo, commits health insurance fraud if the health care provider eliminates the need for, or otherwise waives, payment by the patient of any deductible, copayment, or coinsurance required to be made under the patient's health insurance contract, policy or health benefit plan, and the health care provider knowingly:

(1) Accepts from any third-party payor, as payment in full for services rendered, the amount the third-party payor covers; or

(2) Submits a fee to a third-party payor which is higher than the

fee he or she has agreed to accept from the insured patient with the understanding of waiving the required deductible or copayment.

2. Any health care provider who violates the provisions of this section shall, upon conviction, be guilty of a class A misdemeanor.

3. The requirements of this section shall not supersede contrary standards established by federal law or regulation for services rendered to patients enrolled in Title XVIII or Title XIX or Title XXI of the Social Security Act.

4. Health care services are exempt from the provisions of subsection 1 of this section if such health care services are provided in accordance with a contract or agreement between an employer and an employee or employees and the contract includes, as a part of an employee's salary or employment benefits, terms which authorize a practice that would otherwise be prohibited by subsection 1 of this section.

5. The waiver of any required deductible or copayment for charitable purposes is exempt from the provisions of subsection 1 of this section if:

(1) The health care provider determines that the services are necessary for the immediate health and welfare of the patient; and

(2) The waiver is made on a case-by-case basis and the health care provider determines that payment of the deductible, copayment, or coinsurance would create a substantial financial hardship for the patient; and

(3) The waiver is not a regular business practice of the health care provider.

6. Any health care provider who waives the deductible, copayment or coinsurance for more than one-fourth of his or her patients during any calendar year, excluding patients covered by subsection 3 of this section, or who advertises through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that he or she will accept from any third-party payor, as payment in full for services rendered, the amount the third-party payor covers shall be presumed to be engaged in waiving the deductible or copayment as a regular business practice.

Section 1. 1. Not later than July 1, 2006, the state board of

registration for the healing arts shall promulgate guidelines and standards for the performance of office-based surgery by physicians and surgeons licensed pursuant to chapter 334, RSMo. In developing such guidelines and standards, the board shall consider the findings and recommendations of a patient safety improvement organization selected by the board which represents the interests of physicians, hospitals and the federally designated Medicare quality improvement organization. In developing recommendations, the patient safety improvement organization shall consider the following:

(1) The Special Committee on Outpatient Office-Based Surgery of the Federation of State Medical Boards, as approved by the federation's House of Delegates in April 2002, including but not limited to the Federation of State Medical Boards' Model Guidelines;

(2) The American College of Surgeons' Guidelines for Optimal Office-Based Surgery;

(3) The American Medical Association's Core Principles for Office-Based Surgery;

(4) The American Society of Anesthesiologists' Practice Parameters for Sedation and Analgesia by Non-Anesthesiologists; and

(5) The American Academy of Dermatology's Guidelines for Care in Office-Based Facilities.

2. Not later than January 15, 2007, the board shall present a report to the governor and general assembly which shall address the following topics:

(1) Patient safety standards for and regulatory oversight of office-based surgery in Missouri and other states; and

(2) Trends in the development or adoption of recommended standards for office-based surgery by accreditation or regulatory agencies or medical specialty societies; and

(3) Recommendations regarding legislative changes necessary to enhance its ability to establish and enforce reasonable quality assurance and accountability measures for office-based surgery.

Section 2. As used in sections 2 to 5 of this act, the following terms mean:

(1) "Patient safety data", information disclosed to a patient safety improvement organization including, but not limited to all health care

data, records of history and treatment, interviews, memoranda, analyses, products of quality assurance or quality improvement processes, information collected or created by a health care provider as a result of an occurrence related to the provision of health care services, or proceedings, findings, conclusions, analyses, recommendations, deliberations, reports or minutes of a patient safety improvement organization;

(2) "Patient safety improvement organization", an organization dedicated to improving health care delivery and patient safety by compiling and analyzing patient safety data to determine whether medical treatments are safe, timely, beneficial, and efficient. A patient safety improvement organization shall include but not be limited to a not for profit organization jointly sponsored by physicians, hospitals and the federally designated Medicare quality improvement organization. A patient safety improvement organization shall not be a health care facility, health care facility association, health care facility affiliate, or under the control of the entity that reports patient safety data;

(3) "Health care provider", any physician, hospital, ambulatory surgical center, residential care facility I, residential care facility II, skilled nursing facility, intermediate care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, pharmacist, chiropractor, professional physical therapist, psychologist, hospice, home health agency and any other person or entity that provides health care services under the authority of a license or certificate;

(4) "Health care services", any services that a health care provider renders to a patient in the ordinary course of the health care provider's profession or, if the health care provider is an institution, in the ordinary course of furthering the purposes for which the institution is organized. Health care services shall include, but are not limited to, transfer to a patient of goods or services incidental or pursuant to the practice of the health care provider's profession or in furtherance of the purposes for which an institutional health care provider is organized.

Section 3. Health care providers may release patient safety data to a patient safety improvement organization for use in a quality improvement program without the consent of any patient.

Section 4. Patient safety data shall be confidential and privileged

and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action. However, information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil or administrative action merely because they were provided to a patient safety improvement organization. Additionally, no employee, agent, or member of a governing board of a patient safety improvement organization shall be permitted or required to testify in any such civil or administrative action as to the content of any patient safety data received by such organization, although such individual shall not be prevented from testifying as to matters within such person's knowledge.

Section 5. 1. The confidentiality of patient safety data shall in no way be impaired or otherwise adversely affected solely by reason of the submission of the same to a patient safety improvement organization.

2. The exchange or disclosure of patient safety data by the patient safety improvement organization shall not constitute a waiver of confidentiality or privilege by the health care provider that submitted the data.

3. In order to adequately protect the confidentiality of such patient safety data, no findings, conclusions, analyses, or recommendations of a patient safety improvement organization shall be deemed to establish a standard of care for health care providers.

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