

FIRST REGULAR SESSION

# SENATE BILL NO. 316

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOLAN.

Read 1st time February 7, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1081S.02I

## AN ACT

To repeal sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, and 197.235, RSMo, and to enact in lieu thereof twelve 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A. Sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, and 197.235, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 192.665, 192.667, 197.200, 197.205, 197.210, 197.215, 197.220, 197.225, 197.230, 197.235, 375.939, and 1, 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] **health care providers** drawn from financial statements [which includes the balance sheet, income statement, charity care and bad debt and charges by payer,]

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

prepared in accordance with generally accepted accounting principles. **For hospitals, financial data shall include the balance sheet, income statement, charity care, and bad debt and charges by payer. For ambulatory medical treatment centers as defined in section 197.200, RSMo, financial data shall include revenues, expenses, charity care, and 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] health care providers** 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 **and all other health care providers shall provide outpatient abstract**

**data as filed on claim forms.** [Within one year of August 28, 1992, ambulatory surgical centers as defined in section 197.200, RSMo, shall provide patient abstract data to the department.] 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 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, 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.

197.200. 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, 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 shall be derived from providing one of 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 procedures shall be performed only by physicians, dentists or podiatrists, who at the time are privileged to perform surgical procedures in at least one licensed hospital in the community in which the ambulatory surgical center is located, 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, applicant shall submit a copy of a current working agreement with at least one licensed hospital in the community in which the ambulatory surgical center is located, guaranteeing the transfer and admittance of patients for emergency treatment whenever necessary;

(3) **If the applicant provides surgical procedures, childbirths, cardiac catheterization, or endoscopy, each member of the applicant's surgical or medical staff is a physician, dentist, or podiatrist who has active medical staff privileges in at least one hospital in the same community in which the ambulatory 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;**  
or

**(3) If the applicant provides surgical procedures, childbirths, cardiac catheterization, or endoscopy, the applicant possesses and submits a current working agreement with at least one hospital in the same community in which the ambulatory medical treatment center is located. The agreement shall be subject to the approval of the director of the department of health and shall include each of the following elements:**

**(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) On-call availability of physicians for the center for purposes of treating center patients who present at the hospital emergency room subsequent to obtaining services at the center;**

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

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

**(f) Reimbursement to the hospital for direct services rendered to patients of the center who either need to be transferred to the hospital while receiving care at the center or to patients who present at the hospital emergency department subsequent to receiving care in the center; and**

**(g) The extent to which physicians, dentists, and podiatrists who provide care in the ambulatory medical treatment center will have staff privileges at the hospital and will be available to provide on-call services;**

**(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 members of the surgical and medical staff of the ambulatory medical treatment center do not comply with the requirements of subdivision (2) of subsection 1 of this section and a hospital and ambulatory treatment center fail to negotiate an agreement successfully, as described in subdivision (3) of subsection 1 of this**

section, 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.

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; 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. 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]. **Such rules shall be consistent with Medicare conditions of participation, standards of the joint commission on accreditation of health organizations, where appropriate, and standards developed by nationally recognized medical specialty accreditation entities where appropriate and 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;

(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.

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.**

197.235. 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 or copayment 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. Reimbursements made under chapter 208, RSMo, and federal Medicare laws for inpatient hospitalization are exempt from the provisions of this section.

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 or copayment 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 or copayment 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:

(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) The board's recommendations regarding legislative changes necessary to enhance its ability to establish and enforce reasonable quality assurance and accountability measures for office-based surgery.