FIRST REGULAR SESSION

SENATE BILL NO. 359

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TAYLOR.

Read 1st time February 15, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1598S.01I

AN ACT

To repeal sections 192.665 and 192.667, RSMo, and to enact in lieu thereof two new sections relating to health care data collection and reporting, with penalty provisions.

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

Section A. Sections 192.665 and 192.667, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 192.665 and 192.667, to read as follows: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) "Charge data", information submitted by health care providers **[**on**]** **or its uniform list of** current charges for **[**leading procedures and diagnoses**]** **a given service or item**;

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

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

(4) "Financial data", information submitted by hospitals **and ambulatory surgical centers** drawn from financial statements which includes the balance sheet, income statement, charity care and bad debt and charges by payer, prepared in accordance with generally accepted accounting principles;

(5) "Health care provider", hospitals as defined in section 197.020, RSMo, and ambulatory surgical centers as defined in section 197.200, RSMo;

(6) "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) "Nosocomial infection incidence rate", a risk-adjusted measurement of new cases

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

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) "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) "Patient abstract data", data submitted by hospitals **and ambulatory surgery centers** which includes but is not limited to date of birth, sex, race, zip code, county of residence, **facility identification and address,** admission **hour and** date, **type of admission, source of admission,** discharge **hour and** date, **discharge status,** principal and other diagnoses **codes**, including **diagnosis codes present at admission and** external causes, **condition codes,** principal and other procedures**[**, procedure**]** **codes and** dates, **diagnosis codes present at discharge,** total billed charges **incurred by revenue code, referring physician identification, admitting physician identification, attending physician identification, operating physician identification**, 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 **data as the department may require by rule;**

(10) "Performance outcomes data", all the following information for each one of the one hundred conditions and procedures specified in rules under subsection 9 of section 192.667:

(a) Volume of cases;

(b) Average patient charges;

(c) Length of stay;

(d) Readmission rates;

(e) Mortality rates;

(f) Complication rates; and

(g) Infection rates.

192.667. 1. **(1)** All health care providers shall at least annually provide to the department charge data **[**as**]** **and financial data in a format** required by the department. **[**All hospitals shall at least annually provide patient abstract data and financial data as required by the department. Hospitals**]**

(2) No later than forty-five days after the end of each calendar quarter, each hospital as defined in section 197.020, RSMo, shall **electronically** report **to the department** patient abstract data for **[**outpatients and inpatients. Within one year of August 28, 1992,**]** **each patient who was admitted to, or received outpatient or emergency services at the hospital. No later than forty-five days after the end of each calendar quarter, each** ambulatory surgical centers as defined in section 197.200,

RSMo, shall [provide] **electronically report to the department** patient abstract data [to the department] **for each patient who received outpatient services at the center**.

(3) The department shall specify by rule [the types of information which shall be submitted and] the method of **electronic** submission **of the data to be reported under section 192.665 and this section and in accordance with the uniform standards of the federal electronic transaction standards and code sets required by the Health Insurance Portability and Accountability Act of 1996**.

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] **14** 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] **6, 7, and 10 to 14** 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] **6, 7, and 10 to 14** 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] **6, 7, and 10 to 14** 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**]** **6, 7, and 10 to 14** 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**]** **6, 7, and 10 to 14** of this section.

5. Based on the affirmative recommendation of the infection control advisory panel, and provided that the requirements of subsection **[**12**]** **14** 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**]** **6, 7, and 10 to 14** 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**]** **6, 7, and 10 to 14** 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**]** **14** 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 **in accordance with the provisions of this section** 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;

(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. **(1) The collection, compilation, analysis, and dissemination of** information obtained by the department under the provisions of section 192.665 and this section shall

[not be public information**]** **be performed in a manner that protects the confidentiality of individual patients and meets the requirements of state and federal law, including the Graham-Leach-Bliley Act, 12 U.S.C. Section 1811 et. seq. and the Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. Part 164**. Reports and studies prepared by the department based upon such information shall be public information and may identify individual health care providers.

(2) The department of health and senior services **[**may**]** **shall** authorize the use of the **patient abstract** data by **[**other**]** **a person, or entity, including but not limited to, a government agency,** research organizations **[**pursuant to the provisions of section 192.067**],** **and organizations in the private sector for purposes of clinical performance measurement, including making information available to compare individual health care providers based on performance outcomes data, promoting evidence-based medicine and best practices, patient safety and quality improvement, public health research and other purposes as determined by the department.**

(3) The department shall determine reasonable fees to be charged to the requesting entity for providing electronic access to such data. All fees collected under this section shall be deposited in the "Health Care Consumer's Fund" which is hereby created in the state treasury, and shall only be used to pay for the collection and public disclosure of health care provider data to assist consumers in making informed health care decisions. The state treasurer shall be custodian of the fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

(4) 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, by January 1, 2006:**

(1) Use the patient abstract data collected from health care providers under section 192.665 and this section to make available on its Internet website and in written format upon request, performance outcomes data for each health care provider for not less than one hundred inpatient and outpatient conditions and procedures. Such public data shall be updated on a quarterly basis. The department shall risk-adjust the performance outcomes data for case mix and severity of illness, if applicable, under a procedure specified in rules promulgated

by the department.

(2) Make available on its Internet website educational information on each condition or procedure, including, but not limited to, an explanation of the condition and procedure, potential side effects, alternative treatments and costs, and additional resources that can assist consumers in making an informed health care decision. Such information may be made available by linking consumers to credible national resources such as, but not limited to, the National Library of Medicine.

(3) Make available additional information on the Internet website, including definitions of the data, the age of the data, an explanation of the methodology used to risk-adjust the data and an explanation about why the data may differ from health care provider to health care provider. The agency shall provide guidance to consumers on how to use this information to make informed health care decisions.

(4) Post all information required by this section on the website in language that is understandable to lay persons and accessible to consumers using an interactive query system to allow for the comparison of performance outcomes data between all health care providers licensed in the state for each of the one hundred inpatient and outpatient procedures.

(5) Develop and implement an outreach campaign designed to make health care performance outcomes data understandable and usable for consumers.

9. No later than October 1, 2005, the department shall establish by rule the list of at least one hundred inpatient and outpatient conditions and procedures for which performance outcomes data will be made publicly available for each health care provider. The agency shall convene a group of technical experts to actively seek input on the list of conditions and procedures. Such group shall include an equal number of representatives from the following categories:

(1) Practicing health care professionals and health care facilities;

(2) Clinical and health services researchers knowledgeable in standards-based health care information systems;

(3) Patient groups;

(4) Health care purchasers;

(5) Health insurers; and

(6) Health care information technology industry.

When determining which inpatient and outpatient conditions and procedures to be disclosed, the agency and group of technical experts shall consider their variation in costs, variation in outcomes and magnitude of variations and other relevant information so that the disclosed list of conditions and procedures will

assist consumers in differentiating between health care providers when making health treatment decisions.

10. (1) The department shall undertake a reasonable number of studies and publish information, including at least an annual consumer guide **no later than January 1 of each year**, in collaboration with **[**health care providers, business coalitions and consumers**] the advisory group established in subsection 9 of this section** 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 **disclosed on the Internet website under subsection 8 of this section** used in any report to **[**review and comment on the report**] verify the accuracy of the data** prior to its publication or release for general use. The department **[**shall**] may** include any comments of a health care provider, at the option of the provider, and associations and related organizations **on the Internet website or** in the publication if the department does not change the **website or** publication based upon those comments. **[**The report shall be made available to the public for a reasonable charge.**]**

(2) The department shall study the most effective methods for public disclosure of health care provider performance outcomes data and evaluate the value of disclosing additional measures that are adopted by the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations or similar national entity that establishes standards to measure the performance of health care providers. The department shall post its findings on the department's Internet website and report its findings to the governor and the general assembly by January 1, 2007.

11. (1) Failure of any health care provider to report data under section 192.665 and this section shall result in a fine of ten thousand dollars for each instance of the health care provider's failure to provide the requested information and each day's violation shall constitute a separate offense. Penalties imposed under this section are in addition to other penalties imposed under this chapter.All penalties collected under this section shall be deposited in the health care consumer's fund and shall only be used to pay for the collection and public disclosure of provider data to assist consumers in making informed health care decisions.

[9.**] (2)** 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.**] 12.** 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 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.**]** **13.** 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.**]** **14.** 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.**]** **15.** 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.**]** **16.** Reports published pursuant to subsection **[**12**]** **14** 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.**]** **17.** 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**]** **16** of this section.

[16.**]** **18.** 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.**]** **19.** The department shall promulgate rules to implement the provisions of **[**section**]** **sections** 192.131**, 192.665, and 192.667, RSMo,** 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.