

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 469
96TH GENERAL ASSEMBLY

4433H.08C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 197.080, 197.100, 536.041, and 536.325, RSMo, and to enact in lieu thereof six new sections relating to administrative rules promulgated by certain state agencies.

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

Section A. Sections 197.080, 197.100, 536.041, and 536.325, RSMo, are repealed and
2 six new sections enacted in lieu thereof, to be known as sections 197.080, 197.100, 536.032,
3 536.041, 536.175, and 536.325, to read as follows:

197.080. **1.** The department of health and senior services, with the advice of the state
2 advisory council and pursuant to the provisions of this section and chapter 536, shall adopt,
3 amend, promulgate and enforce such rules, regulations and standards with respect to all hospitals
4 or different types of hospitals to be licensed hereunder as may be designed to further the
5 accomplishment of the purposes of this law in promoting safe and adequate treatment of
6 individuals in hospitals in the interest of public health, safety and welfare. No rule or portion
7 of a rule promulgated under the authority of sections 197.010 to 197.280 shall become effective
8 unless it has been promulgated pursuant to the provisions of section 536.024.

9 **2. The department shall review and revise its regulations governing hospital**
10 **licensure and enforcement as to promote hospital and regulatory efficiencies and eliminate**
11 **duplicative regulation and inspections by or on behalf of state and federal agencies. The**
12 **hospital licensure regulations adopted under this section shall incorporate standards which**
13 **shall include, but not be limited to, the following:**

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

14 **(1) Each citation or finding of a regulatory deficiency shall refer to the specific**
15 **written and publicly available standard and associated written interpretative guidance that**
16 **are the basis of the citation or finding;**

17 **(2) Subject to appropriations, the department shall ensure that its hospital licensure**
18 **regulatory standards are consistent with and do not contradict the federal Centers for**
19 **Medicare and Medicaid Services' (CMS) Conditions of Participation and associated**
20 **interpretative guidance;**

21 **(3) The department shall establish and publish a process and standards for**
22 **complaint investigation, including but not limited to:**

23 **(a) A process and standards for determining which complaints warrant an onsite**
24 **investigation based on a preliminary review of available information from the complainant**
25 **and the hospital. The process and standards shall, at a minimum, provide for a**
26 **departmental determination independent of any recommendation for investigation by or**
27 **in consultation with CMS. For purposes of evaluating such process and standards, the**
28 **number and nature of complaints filed and the recommended actions by the department**
29 **and, as appropriate, CMS shall be disclosed upon request to hospitals, so long as the**
30 **otherwise confidential identity of the complainant or the patient for whom the complaint**
31 **was filed is not disclosed;**

32 **(b) The scope of a departmental investigation of a complaint shall be limited to the**
33 **specific regulatory standard or standards raised by the complaint, unless a documented**
34 **immediate and serious threat, as defined directly and through interpretive guidelines**
35 **included in hospital licensure regulations promulgated under this chapter, is observed or**
36 **identified during such investigation;**

37 **(c) A hospital shall be provided with a report of all complaints made against the**
38 **hospital. Such report shall include the nature of the complaint, the date of the complaint,**
39 **the department conclusions regarding the complaint, the number of investigators and days**
40 **of investigation resulting from each complaint;**

41 **(4) Subject to appropriations, the department shall designate adequate and**
42 **sufficient resources to the annual inspection of hospitals necessary for licensure, including**
43 **but not limited to resources for consultation services and collaboration with hospital**
44 **personnel to facilitate improvements;**

45 **(5) Hospitals and hospital personnel shall have the opportunity to participate in:**

46 **(a) Training sessions provided to state licensure surveyors, which shall be provided**
47 **at least annually. Hospitals and hospital personnel shall assume all costs associated with**
48 **facilitating the training sessions and use of curriculum materials, including but not limited**
49 **to the location for training, food and printing costs; and**

50 **(b) Training of surveyors assigned to inspection of hospitals to the fullest extent**
51 **possible, including the training of surveyors previously designated as a surveyor specific,**
52 **which resulted in the exclusion of all hospital personnel from such training sessions;**

53 **(6) The regulations shall establish specific time lines for state hospital officials to**
54 **provide responses to hospitals regarding the status and outcome of pending investigations**
55 **and regulatory actions and questions about interpretations of regulations. To the extent**
56 **practicable, such time lines shall be identical to the time lines established for the federal**
57 **hospital certification and enforcement system in CMS's State Operations Manual, as**
58 **amended.**

59 **3. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
60 **created under the authority delegated in this section shall become effective only if it**
61 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
62 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
63 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
64 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
65 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,**
66 **shall be invalid and void.**

197.100. 1. Any provision of chapter 198 and chapter 338 to the contrary
2 notwithstanding, the department of health and senior services shall have sole authority, and
3 responsibility for inspection and licensure of hospitals in this state including, but not limited to
4 all parts, services, functions, support functions and activities which contribute directly or
5 indirectly to patient care of any kind whatsoever. The department of health and senior services
6 shall annually inspect each licensed hospital [and] ; **however, the department shall also accept,**
7 **in lieu of such required annual hospital inspection by the department, licensed hospital**
8 **inspection reports from other governmental and recognized accrediting organizations as**
9 **authorized by this section. Recognized accrediting organizations shall be those that have**
10 **deemed status conferred by the Centers for Medicare and Medicaid Services (CMS) to take**
11 **the place of direct CMS oversight and enforcement. The department shall make any other**
12 inspections and investigations as it deems necessary for good cause shown; **provided that, the**
13 **scope of a departmental investigation of a complaint shall be limited to the specific**
14 **regulatory standard or standards raised by the complaint, unless a documented immediate**
15 **and serious threat, as defined directly and through interpretive guidelines included in**
16 **hospital licensure regulations promulgated under this chapter, is observed or identified**
17 **during the investigation.** The department of health and senior services shall accept reports of
18 hospital inspections from governmental agencies and recognized accrediting organizations [in
19 whole or in part] for licensure purposes if[:

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

22 (2) The hospital meets minimum licensure standards; and

23 (3)] the **accreditation** inspection was conducted within [one year] **three years** of the
24 date of license renewal. The department of health and senior services shall attempt to schedule
25 inspections and evaluations required by this section so as not to cause a hospital to be subject to
26 more than one inspection in any twelve-month period from the department of health and senior
27 services or any agency or accreditation organization the reports of which are accepted for
28 licensure purposes pursuant to this section, except for good cause shown.

29 2. Other provisions of law to the contrary notwithstanding, the department of health and
30 senior services shall be the only state agency to determine life safety and building codes for
31 hospitals defined or licensed pursuant to the provisions of this chapter, including but not limited
32 to sprinkler systems, smoke detection devices and other fire safety related matters so long as any
33 new standards shall apply only to new construction.

**536.032. Upon the filing of a request by a state agency with the joint committee on
2 administrative rules and the secretary of state concurrently, and after publication in the
3 Missouri Register, the secretary of state shall have the authority to make nonsubstantive
4 changes to the code of state regulations to update changes in department or division name
5 information in response to statutory changes or executive orders, or to changes in state
6 agency address, state agency telephone numbers, email addresses, or state agency website
7 addresses.**

536.041. Any person may **file a written** petition **with** an agency requesting the adoption,
2 amendment or repeal of any rule. Any agency receiving such a petition or other request in
3 writing to adopt, amend or repeal any rule shall forthwith furnish a copy thereof to the joint
4 committee on administrative rules and to the commissioner of administration[, together with the
5 action, if any, taken or contemplated by the agency as a result of such petition or request, and the
6 agency's reasons therefor]. **Within sixty days after the receipt of the petition, the agency shall
7 submit a written response to the petitioner and copies of the response, in electronic format,
8 to the joint committee on administrative rules and to the commissioner of administration,
9 containing its determination whether such rule should be adopted, continued without
10 change, amended, or rescinded, together with a concise summary of the state agency's
11 specific facts and findings with respect to the criteria set forth in subsection 4 of section
12 536.175. If the agency determines the rule merits adoption, amendment, or rescission, it
13 shall initiate proceedings in accordance with the applicable requirements of this chapter.
14 The joint committee may refer comments or recommendations concerning such rule to the
15 general assembly for further action. Upon timely application, the joint committee on**

16 administrative rules may grant, upon good cause shown, an extension of time to answer a
17 petition. A written petition submitted in accordance with this section shall constitute notice
18 for purposes of subsection 9 of section 536.021.

2 **536.175. 1. Each state agency shall periodically review all of its rules according to
the following review schedule:**

3 (1) Rules contained in titles 1 through 6 of the code of state regulations shall begin
4 the review process no later than July 1, 2015, and every five years thereafter;

5 (2) Rules contained in titles 7 through 10 of the code of state regulations shall begin
6 the review process no later than July 1, 2016, and every five years thereafter;

7 (3) Rules contained in titles 11 through 14 of the code of state regulations shall
8 begin the review process no later than July 1, 2017, and every five years thereafter;

9 (4) Rules contained in titles 15 through 19 of the code of state regulations shall
10 begin the review process no later than July 1, 2018, and every five years thereafter; and

11 (5) Rules contained in titles 20 and higher of the code of state regulations shall
12 begin the review process no later than July 1, 2019, and every five years thereafter.

13 **2. The joint committee on administrative rules shall cause a notification of agency
14 review to be published in the Missouri Register indicating rules being reviewed under this
15 section and shall contain:**

16 (1) Which titles of the code of state regulations will be under review;

17 (2) A notice that anyone may file comments concerning the rules being reviewed no
18 later than sixty days after publication of the notice in the Missouri Register;

19 (3) A notice that all comments must identify the commenter, must specify the rule
20 being commented upon, and must contain comments directly associated to that rule;

21 (4) A listing of agency designee assigned to receive comments on rules under
22 review;

23 **3. State agencies shall provide the joint committee on administrative rules contact
24 information for the agency designee assigned to receive comments under subsection 2 of
25 this section.**

26 **4. Each agency with rules being reviewed, shall prepare a report containing the
27 results of its periodic rule review. The report shall consider and include the following:**

28 (1) Whether the rule continues to be necessary, taking into consideration the
29 purpose, scope, and intent of the statute under which the rule was adopted;

30 (2) Whether the rule is obsolete, taking into consideration the length of time since
31 the rule was modified and the degree to which technology, economic conditions, or other
32 relevant factors have changed in the subject area affected by the rule;

33 **(3) Whether the rule overlaps, duplicates, or conflicts with other state rules, and**
34 **to the extent feasible, with federal and local governmental rules;**

35 **(4) Whether a less restrictive, more narrowly tailored, or alternative rule could**
36 **adequately protect the public or accomplish the same statutory purpose;**

37 **(5) Whether the rule needs amendment or rescission to reduce regulatory burdens**
38 **on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork;**

39 **(6) Whether the rule incorporates a text or other material by reference and, if so,**
40 **whether the text or other material incorporated by reference meets the requirements of**
41 **section 536.031;**

42 **(7) For rules that affect small business, the specific public purpose or interest for**
43 **adopting the rules and any other reasons to justify its continued existence; and**

44 **(8) The nature of the comments received by the agency under subsection 2 of this**
45 **section, a summary of which shall be attached to the report as an appendix and shall**
46 **include the agency's responses thereto.**

47 **5. Each agency with rules subject to review shall cause their report to be filed**
48 **electronically with the joint committee on administrative rules and the small business**
49 **regulatory fairness board no later than June thirtieth of the year after publication of**
50 **agency review in the Missouri Register under subsection 2 of this section. The reports shall**
51 **also be made available on the state agency's website. If the state agency fails to file the**
52 **report as required by this section for any rule and has not received an extension for good**
53 **cause from the joint committee on administrative rules, the joint committee on**
54 **administrative rules shall notify the secretary of state to publish a notice as soon as**
55 **practicable in the Missouri Register as to which rules the delinquency exists. The rule shall**
56 **be void and of no further effect after the first sixty legislative days of the next regular**
57 **session of the general assembly unless the state agency corrects the delinquency by**
58 **providing the required review within ninety days after publication. Upon determination**
59 **that the agency has complied with the requirements of this section regarding any**
60 **delinquency that resulted in notice being published, the joint committee on administrative**
61 **rules shall notify the secretary of state to remove the rule from the notice of rules scheduled**
62 **to become null and void.**

 536.325. 1. [Each agency with rules that affect small business shall submit by June
2 thirteenth of each odd-numbered year a list of such rules to the general assembly and the board.
3 The agency shall also submit a report describing the specific public purpose or interest for
4 adopting the respective rules and any other reasons to justify its continued existence. The
5 general assembly may subsequently take such action in response to the report as it finds
6 appropriate.

7 2.] The board shall provide to the head of each agency a list of any rules adopted by the
8 agency that affect small business and have generated complaints or concerns, including any rules
9 that the board determines may duplicate, overlap, or conflict with other rules or exceed statutory
10 authority. Within forty-five days after being notified by the board the list of rules adopted, the
11 agency shall submit a written report to the board in response to the complaints or concerns. The
12 agency shall also state whether the agency has considered the continued need for the rules and
13 the degree to which technology, economic conditions, and other relevant factors may have
14 diminished or eliminated the need for maintaining the rules.

15 [3.] **2.** The board may solicit testimony from the public at a public meeting regarding any
16 report submitted by the agency under this section **or section 536.175**. The board shall
17 **electronically** submit an evaluation report to the governor and the general assembly regarding
18 small business comments, agency response, and public testimony on rules in this section **and the**
19 **report shall be maintained on the board's website**. The governor and the general assembly
20 may take such action in response to the report as they find appropriate.

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