Title 19 – DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30 – Division of Regulation and Licensure
Chapter 20 – Hospitals

EMERGENCY RULE

19 CSR 30-20.144 Standards and Guidelines for Essential Caregiver Program

PURPOSE: This rule establishes the standards and guidelines regarding the essential caregiver program established under section 191.2290, RSMo.

*EMERGENCY STATEMENT: The "Essential Caregiver Program Act" became law on August 28, 2022. Under this new law, the department is required to develop standards and guidelines concerning the essential caregiver program. These standards and guidelines will provide the regulatory framework hospitals must follow to ensure that their patients have access to their designated essential caregivers. The standards and guidelines developed by the department must be operational during a state of emergency declared pursuant to Chapter 44, relating to infectious, contagious, communicable, or dangerous diseases. While there is no current declaration of a state of emergency, the implementing regulations for the Essential Caregiver Program Act should be in place prior to that potential event. It is imperative that this rule become effective as close to the same time that the law becomes effective in order to ensure that a hospital patient has immediate access to his or her essential caregiver, an indispensable member of the patient's care team. As a result, the department finds a compelling governmental interest, which requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed September 15, 2022, becomes effective September 29, 2022, and expires March 27, 2023.*

(1) As used in this rule, the following terms and phrases shall mean:

(A) Department shall mean the Department of Health and Senior Services;

(B) Essential caregiver shall mean a family member, friend, guardian, or other individual selected by a hospital patient who has not been adjudged incapacitated under chapter 475, or the guardian or legal representative of the patient;

(C) Hospital shall have the same meaning assigned to it 19 CSR 30-20.011(9).

(2) Every hospital within Missouri shall develop an essential caregiver program which shall allow a patient who has not been adjudged incapacitated under chapter 475, RSMo, a patient's guardian, or a patient's legally authorized representative to designate an essential caregiver for in-person contact with the patient in accordance with the provisions of section 191.2290, RSMo, and the standards and guidelines developed by the department under this rule.

(3) The essential caregiver program shall be operable during a state of emergency declared pursuant to chapter 44, RSMo, relating to infectious, contagious, communicable, or dangerous diseases.

(4) The essential caregiver program established by the hospital shall:

(A) Allow at least two individuals per patient to be designated as essential caregivers, although the hospital may limit the in-person contact to one caregiver at a time. The caregiver shall not be required to have previously served in a caregiver capacity prior to the declared state of emergency;

(B) Include a reasonable in-person contact schedule to allow the essential caregiver to provide care to the patient for at least four (4) hours each day, including evenings, weekends, and holidays, but shall allow for twenty-four-hour in-person care as necessary and appropriate for the well-being of the patient. The essential caregiver shall be permitted to leave and return during the scheduled hours or be replaced by another essential caregiver;

(C) Include procedures to enable physical contact between the patient and the essential caregiver. The hospital may not require the essential caregiver to undergo more stringent screening, testing, hygiene, personal protective equipment, and other infection control and prevention protocols than required of hospital employees; and

(D) Specify in its protocols the criteria that the hospital will use if it determines that in-person contact by a particular essential caregiver is inconsistent with the patient's therapeutic care and treatment or is a safety risk to other patients or staff at the facility. Any limitations placed upon a particular essential caregiver shall be reviewed and documented every seven (7) days to determine if the limitations remain appropriate.

(5) A hospital shall inform, in writing, patients who have not been adjudged incapacitated under chapter 475, or guardians or legal representatives of patients, of the essential caregiver program and the process for designating an essential caregiver. Consistent with 42 CFR 482.12(h), a hospital shall inform each patient, or such patient's guardian or legal representative, where appropriate, of his or her visitation rights and right to access an essential caregiver in accordance with this rule.

(6) A hospital may restrict or revoke in-person contact by an essential caregiver who fails to follow required protocols and procedures established under section (4) of this rule.

(7) A hospital may request from the department a suspension of in-person contact by essential caregivers for a period not to exceed seven (7) days. A hospital may request from the department an extension of a suspension for more than seven (7) days, but such extension period shall not be for a period longer than seven (7) days at a time. Under the provisions of this section, a hospital shall not suspend in-person caregiver contact for more than fourteen (14) consecutive days in a twelve-month period or for more than forty-five (45) total days in a twelve-month period. Requests for a suspension of in-person contact of essential caregivers or an extension of a suspension under this section shall be submitted in writing to the department. Department determinations in response to suspension requests shall be in writing and both requests and determinations shall be made a part of the department's permanent records for the hospital.

(A) Requests for a suspension of in-person contact by essential caregivers shall contain at a minimum the following:

1. The specific reason or reasons why allowing in-person contact by essential caregivers poses a serious community health risk;

2. An explanation of the extenuating factors which may be relevant to granting a suspension to the particular requesting hospital; and

3. The length of time, not to exceed seven (7) days, the suspension is being requested.

(8) The department's written determination shall identify a suspension expiration date, if approved. The hospital may reapply for an extension of the suspension up to one (1) day prior to the expiration of the department's originally approved suspension. The department may deny a hospital's request to suspend in-person contact with essential caregivers if the department determines that such in-person contact does not pose a serious community health risk.

(9) The department shall suspend in-person contact by essential caregivers under this rule if it determines that doing so is required under federal law, including a determination that federal law requires a suspension of in-person contact by members of the patient's care team.

(10) The provisions of this rule shall not apply to those patients whose particular plan of therapeutic care and treatment necessitates restricted or otherwise limited visitation for reasons unrelated to the stated reasons for the declared state emergency.

(11) The provisions of this rule shall not be construed to require an essential caregiver to provide necessary care to a patient and a hospital shall not require an essential caregiver to provide necessary care.

AUTHORITY: sections 191.2290 and 197.080, RSMo Supp. 2022. Emergency rule filed Sept. 15, 2022, effective Sept. 29, 2022, expires March 27, 2022. Original rule filed Sept. 15, 2022. An emergency rule and a proposed rule covering this same material will be published in the Oct. 17, 2022, issue of the ***Missouri Register****.*

PUBLIC COST: This emergency rule will cost state agencies or political subdivisions one hundred twenty-two thousand four hundred dollars ($122,400.00) in the time the emergency is effective.

PRIVATE COST: This emergency rule will cost private entities four hundred thirty-eight thousand six hundred dollars ($438,600.00) in the time the emergency is effective.

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Health and Senior Services
Division Title: Division 30—Division of Regulation and Licensure
Chapter Title: Chapter 20 — Hospitals

Rule Number and Title:	19 CSR 30-20.144 Standards and Guidelines for Essential Caregiver Program.
Type of Rulemaking:	Emergency Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
36 public hospitals	**Public Hospitals**	**$122,400.00**

III. WORKSHEET
Cost for Private Hospitals to Adopt and Implement Essential Caregiver Programs

Action	Explanation	Cost	Cost for Private Hospitals
Policy and procedure development, implementation, and training	Policy and Procedure Develoment-1FTE*8hrs=$320 Implementation-1FTE*2hrs=80 Training-100 FTE*1hr=$3000	$3400	36 public hospitals * $3400 = $122,400

IV. ASSUMPTIONS

While it is generally assumed that most hospitals have already built into their operational costs the cost of updating their individual institutional policies and procedures to reflect changes made in law, this fiscal note attempts to breakdown the individual cost of complying with §191.2290, RSMo and the proposed emergency rule. In order to comply with the provisions of the proposed emergency rule, hospitals will have to update their

visitation policies to incorporate the essential caregiver guidelines and standards established by the proposed emergency rule.

This fiscal note also assumes that a state of emergency under Chapter 44, RSMo, relating to infectious diseases, has not been declared and is not in place. Even though the Department does not expect a state of emergency to be declared or in place during the time period of this emergency rule, the Department does expect public hospitals to adopt and implement policies to be in compliance with the provisions of the emergency rule. Of course, the steps taken by public hospitals to implement policies and train personnel to be consistent with the essential caregiver emergency rule will have a fiscal impact.

The department licenses approximately 36 public hospitals. The Department estimates that each public hospital will incur approximately $3,400 in costs in developing the policies and procedures for the implementation of this emergency rule.

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Health and Senior Services
Division Title: Division 30—Division of Regulation and Licensure
Chapter Title: Chapter 20 — Hospitals

Rule Number and Title:	19 CSR 30-20.144 Standards and Guidelines for Essential Caregiver Program.
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II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
129	**Private Hospitals**	$438,600.00 for 6 month period that a state of emergency is in effect (assumes no state of emergency has been declared or is in place)

III. WORKSHEET

Cost for Private Hospitals to Adopt and Implement Essential Caregiver Programs

Action	Explanation	Cost	Cost for Private Hospitals
Policy and procedure development, implementation, and training	Policy and Procedure Develoment-1FTE*8hrs=$320 Implementation-1FTE*2hrs=80 Training-100 FTE*1hr=$3000	$3400	129 private hospitals * $3400 = $438,600.00

IV. ASSUMPTIONS

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This fiscal note also assumes that a state of emergency under Chapter 44, RSMo, relating to infectious diseases, has not been declared and is not in place. Even though the Department does not expect a state of emergency to be declared or in place during the time period of this emergency rule, the Department does expect private hospitals to adopt and implement policies to be in compliance with the provisions of the emergency rule. Of course, the steps taken by private hospitals to implement policies and train personnel to be consistent with the essential caregiver emergency rule will have a fiscal impact.

The department licenses approximately 129 private hospitals (hospitals not owned by state or local governments). The Department estimates that each private hospital will incur approximately $3,400 in costs in developing the policies and procedures for the implementation of this emergency rule.