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# Emergency Rule

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## Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

### Division 30—Division of Regulation and Licensure Chapter 30—Ambulatory Surgical Centers and Abortion Facilities

#### EMERGENCY AMENDMENT

**19 CSR 30-30.060 Standards for the Operation of Abortion Facilities.** The department is amending Paragraph 8 of subsection (1)(A).

*PURPOSE:* This amendment updates the list of laws, regulations, and standards that governing bodies must ensure abortion facilities abide by or otherwise comply with.

*EMERGENCY STATEMENT:* This emergency amendment requires governing bodies operating abortion facilities within Missouri to ensure that their facilities abide with certain regulations governing their operation. In addition to requiring governing bodies ensure that their facilities are operating in compliance with the applicable state and federal laws and regulations, this emergency amendment requires violations of these laws and regulations to be immediately referred to the Medicaid Audit and Compliance Unit of the Department of Social Services. This information transfer will allow MMAC to evaluate (or reevaluate) Medicaid eligibility of the provider in consideration of current deficiencies and thereby increase further compliance with state and federal laws and regulations governing abortion facilities. As a result, the Department of Health and Senior Services finds that there is a compelling governmental interest that requires an early effective date as permitted under Section 536.025, RSMo, in order to ensure that abortion facilities are operated in accordance with all legal requirements and applicable standards of care. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. Subject to section 536.025, this emergency rule was filed September 28, 2021, becomes effective October 13, 2021, and expires April 10, 2022.

(1) Governing Body, Administration, and Medical Staff.

(A) The facility shall have a governing body which may be an individual owner or owners, partnership, corporate body, association, or public agency.

1. The governing body shall have full legal responsibility for determining, implementing, and monitoring policies governing a facility's total operation and for ensuring that the policies are administered in a manner to provide acceptable care in a safe environment and in accordance with all legal requirements and standards of care.

2. The governing body shall select and employ an administrator who is a physician licensed in Missouri, a registered nurse licensed in Missouri, or an individual who has at least one (1) year of administrative experience in health care.

3. If there is any change in the designation of the administrator, the governing body shall notify the department within ten (10) calendar days of the change.

4. The governing body shall ensure that, in the absence of the administrator from the facility, a person who meets the qualifications of an administrator as defined in this regulation shall be present at the facility and fulfill the administrator's duties.

5. Bylaws of the governing body shall acknowledge that department surveyors shall be allowed to inspect the facility at any time the facility is in operation. Surveyors shall have due regard for the medical condition and reasonable privacy of the on-site patients.

6. Bylaws of the governing body shall require that the medical staff, facility personnel and all others providing services relative to

the facility shall be directly or indirectly responsible to the governing body through the administrator.

7. The governing body, through the administrator, shall establish criteria for the content of patient records and shall provide for timely completion of those records and disciplinary action for noncompliance

8. The governing body, through the administrator, shall ensure that the abortion facility abides by all applicable state and federal laws and regulations. This shall include, but not be limited to, compliance with Chapter 188, RSMo/., **13 CSR 70-3.030(3), failure to notify pathology lab of failed abortion within twenty-four (24) hours, failure to ensure the physician providing informed consent to the patient is the physician who performs the procedure, failure to ensure all medical records associated with abortions accurately reflect the date and time the record was created, failure to ensure the physician who performs the abortion performs a pelvic exam at least seventy-two (72) hours before an abortion unless, in the physician's clinical judgment, such pelvic exam is not medically necessary and said physician documents the reason for such determination, failure of any physician, nurse, or other health care provider, or their contracted agents, to cooperate with any Department of Health and Senior Services investigator upon written request of the investigator, failure to ensure all employees participate in annual fire drill, failure to ensure policies are written in accordance with regulatory requirements, failure to ensure endotracheal equipment is maintained and that staff is aware of the location of the equipment, failure to follow acceptable sterilization standards for surgery instruments and equipment, or failure to maintain controlled substance logs in accordance with published regulations. Any violation of law or regulation shall be immediately referred, in writing, with details of said violation or violations, to the Medicaid Audit and Compliance Unit of the Department of Social Services.**

9. The governing body, through the administrator, shall be responsible for developing, implementing, and enforcing a policy to ensure protection of facility employees, physicians, and volunteers from retaliation or adverse employer actions by the facility for disclosing information regarding alleged infection control concerns; alleged facility mismanagement or fraudulent activity; or alleged violations of state or federal law or regulations regarding patient care, patient safety, or facility safety

*AUTHORITY:* section 197.225, RSMo Supp. [2019] 2021. Original rule filed July 15, 1987, effective Oct. 25, 1987. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed September 28, 2021, effective October 13, 2021, and expires April 10, 2022. An emergency amendment and a proposed amendment covering this same material will be published in the Nov. 1, 2021, issue of the *Missouri Register*.

*PUBLIC COST:* This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

*PRIVATE COST:* This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.