

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5781H.011  
Bill No.: HB 2808  
Subject: Department of Health and Senior Services; Health Care; Abortion; Medical  
Procedures and Personnel  
Type: Original  
Date: March 4, 2024

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Bill Summary: This proposal modifies provisions relating to health care facilities.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
General Revenue	(\$705,237)	(\$804,397)	(\$818,981)
<b>Total Estimated Net Effect on General Revenue</b>	<b>(\$705,237)</b>	<b>(\$804,397)</b>	<b>(\$818,981)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on <u>Other State Funds</u></b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
General Revenue	7 FTE	7 FTE	7 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>7 FTE</b>	<b>7 FTE</b>	<b>7 FTE</b>

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### §197.200, 197.225, 197.230, 197.235 and 197.240 - Provisions relating to health care facilities

Officials from the **Department of Health and Senior Services (DHSS)** state §197.200(2) amends the definition of ambulatory surgical center to better align with the federal definition.

Section 197.200(3) adds the term birthing center, which is defined as “any facility that is not licensed as part of a hospital, that provides maternity care away from the mother’s usual residence, and in which low-risk births are planned to occur following normal, uncomplicated pregnancies.” This new definition serves to separate birthing centers from ambulatory surgical center and office-based surgery facility regulations; it does not change the regulatory scheme of birthing centers.

Section 197.200(13) adds the term office-based surgery facility (OBSF), which is defined as “any distinct establishment that is operated, in whole or in part, for the purpose of performing surgical procedures under procedural sedation or anesthesia not expected to require hospitalization, or for the purpose of performing any surgical procedure the department determines is of such risk to the patient that it requires additional safety procedures but that is not expected to require hospitalization, and in which the duration of services for each patient is not expected to exceed twenty-four hours following the patient's admission. The term "surgical procedure" as used in this subdivision shall not include any dental procedure performed by a dentist currently licensed under chapter 332.”

Other terms added to Section 197.200 include: certified registered nurse anesthetist; deep sedation and analgesia; general anesthesia; major conduction anesthesia; minimal procedural sedation; moderate procedural sedation; procedural sedation; and surgical procedure. Clarifying these terms will provide consistent and quality facility oversight.

The proposed legislation further amends provisions of Chapter 197 by adding OBSFs and birthing centers to the list of facilities that are licensed and regulated by the Department of Health and Senior Services (DHSS) under Sections 197.200 to 197.240. The addition of birthing centers to this list only serves to separate birthing centers from ambulatory surgical center and OBSF regulations; it does not change the regulatory scheme of birthing centers.

Section 197.225 gives DHSS the authority to adopt rules, regulations, and standards necessary to carry out the provisions of Sections 197.200 to 197.240.

Section 197.225.1(6) creates a three-tiered level of regulation for OBSFs. The tier designation of an OBSF must be based on the surgical procedure with the highest type of designation to be performed at such facilities. Such tiers shall include “(a) Type I: Surgical procedures where only minimal procedural sedation is required and the chances of complications requiring hospitalization are remote, and any surgical procedure the department determines is of such risk to the patient that it requires additional safety procedures; (b) Type II: Surgical procedures that require moderate procedural sedation or deep sedation and analgesia and that require close perioperative monitoring, and any surgical procedure the department determines is of such risk to the patient that it requires additional safety procedures; and (c) Type III: Surgical procedures that require either the use of general anesthesia or major conduction anesthesia combined with procedural sedation, and any surgical procedure the department determines is of such risk to the patient that it requires additional safety procedures.”

While the actual number of OBSFs within Missouri is unknown, HSL estimates approximately 3,000 Type I OBSFs, which would not require anything beyond annual registration/attestation of the level of procedures performed onsite, with no inspections or additional oversight, unless the Department designated certain Type I procedures a higher tiered risk. In addition, HSL estimates approximately 150 Type II and/or Type III OBSFs will become licensed under the proposed legislation, which would be subject to periodic inspections based on the Department’s determination of need. These estimates are based on a comparison of other states that regulate OBSFs in some way, as well as a preliminary search for likely OBSFs requiring licensure in Missouri. The estimated 150 Type II and Type III OBSFs would each pay a **\$200 annual licensing fee, for an annual total of \$30,000**. All fees collected will be deposited in the State’s general revenue fund.

Section 197.230 gives the Department the authority to conduct inspections and investigate complaints related to OBSFs and birthing centers. The addition of birthing centers only serves to separate birthing centers from ambulatory surgical center and OBSF regulations; it does not change the regulatory scheme of birthing centers.

The Department of Health and Senior Services’ Section for Health Standards and Licensure (HSL) is responsible for the licensure and regulation of facilities licensed under §§197.200 to 197.240. The addition of OBSFs to Chapter 197 will create additional facilities that HSL is required to license and inspect.

As a result of the proposed legislation, HSL will be required to promulgate rules related to OBSFs; provide OBSF program oversight; license and inspect OBSFs; and investigate complaints related to OBSFs. HSL will need the following additional staff to carry out these functions:

- Four (4) full-time Registered Nurses (annual salary \$75,000) (telecommuters);
- one (1) full-time Registered Nurse Supervisor (\$80,000);
- one (1) full-time Program Assistant (annual salary \$45,972); and
- one (1) full-time Senior Accounts Assistant (annual salary \$51,064).

**Oversight** does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by the DHSS. Oversight notes there is no emergency clause. Therefore, Oversight will reflect the estimated licensing fees to be collected in FY 2025 as \$25,000.

Officials from the **Office of Attorney General (AGO)** assume any potential litigation costs arising from this proposal can be absorbed with existing resources. However, the AGO may seek additional appropriations if the proposal results in a significant increase in litigation or investigation.

**Oversight** does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Public Safety (DPS), Missouri Highway Patrol (MHP)** defer to the Missouri Department of Transportation (MODOT) for the potential fiscal impact of this proposal.

**Oversight** notes DPS/MHP's deferral to MODOT for a statement of fiscal impact; for fiscal note purposes, Oversight assumes no fiscal impact for DPS/MHP.

Officials from the **Department of Commerce and Insurance, the Department of Social Services, the Missouri Consolidated Health Care Plan, the Office of Administration - Administrative Hearing Commission, the Office of the State Courts Administrator** and the **Newton County Health Department** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Officials from the **Missouri Department of Conservation** and **Missouri Department of Transportation** did not respond to **Oversight's** request for fiscal impact for this proposal.

**Oversight** only reflects the responses received from state agencies and political subdivisions; however, other local public health agencies and hospitals were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System (MOLIS) database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
<b>GENERAL REVENUE</b>			
<u>Revenue</u> – DHSS - annual licensure fees p. 4	\$25,000	\$30,000	\$30,000
<u>Costs</u> – DHSS, HSL (§§197.200 - 197.240) p. 4-5			
Personal Service	(\$397,530)	(\$486,577)	(\$496,308)
Fringe Benefits	(\$241,693)	(\$293,730)	(\$297,502)
Expense & Equipment	(\$91,014)	(\$54,090)	(\$55,171)
<u>Total Costs</u> – DHSS, HSL	<u>(\$730,237)</u>	<u>(\$834,397)</u>	<u>(\$848,981)</u>
FTE Change	7 FTE	7 FTE	7 FTE
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(\$705,237)</u></b>	<b><u>(\$804,397)</u></b>	<b><u>(\$818,981)</u></b>
Estimated Net FTE Change on General Revenue	7 FTE	7 FTE	7 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies provisions relating to health care facilities. This bill changes the definition of "ambulatory surgical centers" to be either:

- (1) A distinct establishment operating exclusively for the purpose of providing surgical procedures that do not require hospitalization and in which the duration of services provided to the patient does not exceed 24 hours; or

(2) A distinct establishment operating in part for the purposes of providing surgical procedures that do not require hospitalization and in which the duration of services provided to the patient does not exceed 24 hours, and which applies to the Department of Health and Senior Services to be designated and regulated as an ambulatory surgical center.

The bill adds "office-based surgery facility" and "birthing centers", as defined in the bill, to existing licensure requirements set by the Department. Additionally, the bill specifies that for surgical procedures performed in an ambulatory surgical center or office-based surgery facility, such procedures will be performed only by physicians or podiatrists who are authorized to administer such treatment within their respective scope of practice or through a lawful collaborative practice arrangement. The bill creates provisions that indicate a regulated center or facility's "substantial failure to comply" with existing licensing requirements as well as the provisions of this bill.

For any individual aggrieved by an official action of the Department affecting the licensed status of a person, the bill requires any petition for a determination of such to be filed with the administrative hearing commission by the aggrieved party within 60 days from the mailing date of the notice of the Department's official action.

This bill modifies the Department's rulemaking authority relating to certain licensure requirements for office-based surgery facilities, birthing centers, and abortion facilities, and includes a tiered level of regulation of office-based surgery facilities that imposes only those regulations deemed necessary to ensure patient safety at each tier of regulation, and such designation will be based on the surgical procedure with the highest type of designation to be performed at each facility. The provisions of each tier may be found in the bill.

The bill adds office-based surgery facilities and birthing centers to the list of facilities that, if operated without a license required by the Department, would be guilty of a class A misdemeanor.

This bill also adds office-based surgery facilities and birthing centers to facilities in which accident and health insurers are required to cover care provided in such facilities, provided that such service would have been covered under the terms of the carrier's policy or contract as an eligible inpatient service. (§197.200, 197.225, 197.230, 197.235 and 197.240)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements, but would require rental space.

SOURCES OF INFORMATION

Attorney General's Office

Department of Commerce and Insurance

Department of Health and Senior Services

Department of Public Safety - Missouri Highway Patrol

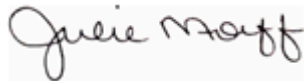
Department of Social Services

Missouri Consolidated Health Care Plan

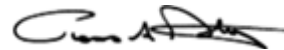
Office of Administration - Administrative Hearing Commission

Office of the State Courts Administrator

Newton County Health Department



Julie Morff  
Director  
March 4, 2024



Ross Strobe  
Assistant Director  
March 4, 2024