

FIRST REGULAR SESSION

SENATE BILL NO. 204

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

0203S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 354.095, RSMo, and to enact in lieu thereof four new sections relating to certificates of need.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 354.095, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.705, 198.530, 208.169, and 354.095, to read as follows:

197.705. All hospitals and health care facilities[, defined in sections 197.020 and 197.305] **licensed under chapters 197 and 198**, shall require all personnel providing services in such facilities to wear identification badges while acting within the scope of their employment. The identification badges of all personnel shall prominently display the licensure status of such personnel.

198.530. 1. If an enrollee in a managed care organization is also a resident in a long-term care facility licensed pursuant to chapter 198, or a continuing care retirement community, [as defined in section 197.305,] such enrollee's managed care organization shall provide the

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

6 enrollee with the option of receiving the covered service in
7 the long-term care facility which serves as the enrollee's
8 primary residence. For purposes of this section, "managed
9 care organization" means any organization that offers any
10 health plan certified by the department of health and senior
11 services designed to provide incentives to medical care
12 providers to manage the cost and use of care associated with
13 claims, including, but not limited to, a health maintenance
14 organization and preferred provider organization. The
15 resident enrollee's managed care organization shall
16 reimburse the resident facility for those services which
17 would otherwise be covered by the managed care organization
18 if the following conditions apply:

19 (1) The facility is willing and able to provide the
20 services to the resident; and

21 (2) The facility and those health care professionals
22 delivering services to residents pursuant to this section
23 meet the licensing and training standards as prescribed by
24 law; and

25 (3) The facility is certified through Medicare; and

26 (4) The facility and those health care professionals
27 delivering services to residents pursuant to this section
28 agree to abide by the terms and conditions of the health
29 carrier's contracts with similar providers, abide by patient
30 protection standards and requirements imposed by state or
31 federal law for plan enrollees and meet the quality
32 standards established by the health carrier for similar
33 providers.

34 2. The managed care organization shall reimburse the
35 resident facility at a rate of reimbursement not less than
36 the Medicare allowable rate pursuant to Medicare rules and
37 regulations.

38 3. The services in subsection 1 of this section shall
39 include, but are not limited to, skilled nursing care,
40 rehabilitative and other therapy services, and postacute
41 care, as needed. Nothing in this section shall limit the
42 managed care organization from utilizing contracted
43 providers to deliver the services in the enrollee's resident
44 facility.

45 4. A resident facility shall not prohibit a health
46 carrier's participating providers from providing covered
47 benefits to an enrollee in the resident facility. A
48 resident facility or health care professional shall not
49 impose any charges on an enrollee for any service that is
50 ancillary to, a component of, or in support of the services
51 provided under this section when the services are provided
52 by a health carrier's participating provider, or otherwise
53 create a disincentive for the use of the health carrier's
54 participating providers. Any violation of the requirements
55 of this subsection by the resident facility shall be
56 considered abuse or neglect of the resident enrollee.

208.169. 1. Notwithstanding other provisions of this
2 chapter, including but not limited to sections 208.152,
3 208.153, 208.159 and 208.162:

4 (1) There shall be no revisions to a facility's
5 reimbursement rate for providing nursing care services under
6 this chapter upon a change in ownership, management control,
7 operation, stock, leasehold interests by whatever form for
8 any facility previously licensed or certified for
9 participation in the Medicaid program. Increased costs for
10 the successor owner, management or leaseholder that result
11 from such a change shall not be recognized for purposes of
12 reimbursement;

(2) In the case of a newly built facility or part thereof which is less than two years of age and enters the Title XIX program under this chapter after July 1, 1983, a reimbursement rate shall be assigned based on the lesser of projected estimated operating costs or one hundred ten percent of the median rate for the facility's class to include urban and rural categories for each level of care including ICF only and SNF/ICF. The rates set under this provision shall be effective for a period of twelve months from the effective date of the provider agreement at which time the rate for the future year shall be set in accordance with reported costs of the facility recognized under the reimbursement plan and as provided in subdivisions (3) and (4) of this subsection. Rates set under this section may in no case exceed the maximum ceiling amounts in effect under the reimbursement regulation;

(3) Reimbursement for capital related expenses for newly built facilities entering the Title XIX program after March 18, 1983, shall be calculated as the building and building equipment rate, movable equipment rate, land rate, and working capital rate.

(a) The building and building equipment rate will be the lower of:

a. Actual acquisition costs, which is the original cost to construct or acquire the building[, not to exceed the costs as determined in section 197.357]; or

b. Reasonable construction or acquisition cost computed by applying the regional Dodge Construction Index for 1981 with a trend factor, if necessary, or another current construction cost measure multiplied by one hundred eight percent as an allowance for fees authorized as architectural or legal not included in the Dodge Index

45 Value, multiplied by the square footage of the facility not
46 to exceed three hundred twenty-five square feet per bed,
47 multiplied by the ratio of forty minus the actual years of
48 the age of the facility divided by forty; and multiplied by
49 a return rate of twelve percent; and divided by ninety-three
50 percent of the facility's total available beds times three
51 hundred sixty-five days.

52 (b) The maximum movable equipment rate will be fifty-
53 three cents per bed day.

54 (c) The maximum allowable land area is defined as five
55 acres for a facility with one hundred or less beds and one
56 additional acre for each additional one hundred beds or
57 fraction thereof for a facility with one hundred one or more
58 beds.

59 (d) The land rate will be calculated as:

60 a. For facilities with land areas at or below the
61 maximum allowable land area, multiply the acquisition cost
62 of the land by the return rate of twelve percent, divide by
63 ninety-three percent of the facility's total available beds
64 times three hundred sixty-five days.

65 b. For facilities with land areas greater than the
66 maximum allowable land area, divide the acquisition cost of
67 the land by the total acres, multiply by the maximum
68 allowable land area, multiply by the return rate of twelve
69 percent, divide by ninety-three percent of the facility's
70 total available beds times three hundred sixty-five days.

71 (e) The maximum working capital rate will be twenty
72 cents per day;

73 (4) If a provider does not provide the actual
74 acquisition cost to determine a reimbursement rate under
75 subparagraph a. of paragraph (a) of subdivision (3) of
76 subsection 1 of this section, the sum of the building and

77 building equipment rate, movable equipment rate, land rate,
78 and working capital rate shall be set at a reimbursement
79 rate of six dollars;

80 (5) For each state fiscal year a negotiated trend
81 factor shall be applied to each facility's Title XIX per
82 diem reimbursement rate. The trend factor shall be
83 determined through negotiations between the department and
84 the affected providers and is intended to hold the providers
85 harmless against increase in cost. In no circumstances
86 shall the negotiated trend factor to be applied to state
87 funds exceed the health care finance administration market
88 basket price index for that year. The provisions of this
89 subdivision shall apply to fiscal year 1996 and thereafter.

90 2. The provisions of subdivisions (1), (2), (3), and
91 (4) of subsection 1 of this section shall remain in effect
92 until July 1, 1989, unless otherwise provided by law.

354.095. 1. A corporation subject to the provisions
2 of sections 354.010 to 354.380 may, in the discretion of its
3 board of directors, limit or define the classes of persons
4 who shall be eligible to become members or beneficiaries,
5 limit and define the benefits which it will furnish, and may
6 define such benefits as it undertakes to furnish into
7 classes or kinds. It may make available to its members or
8 beneficiaries such health services, or reimbursement
9 therefor, as the board of directors of any such corporation
10 may approve; if maternity benefits are provided to any
11 members of any plan, then maternity benefits shall be
12 provided to any member of such plan without discrimination
13 as to whether the member is married or unmarried, and if
14 maternity benefits are provided to a beneficiary of any
15 plan, then maternity benefits shall be provided to such

beneficiary of such plan without discrimination as to whether the beneficiary is married or unmarried.

2. [If an ambulatory surgical facility as defined by subdivision (2) of section 197.200, has received a certificate of need as provided in chapter 197,] A health services corporation shall provide benefits to [the facility] **an ambulatory surgical center, as defined by section 197.200**, on the same basis as it does to all other health care facilities, whether contracting members or noncontracting members. A health services corporation shall use the same standards that are applied to any other health care facility within the same health services area in defining the benefits that the corporation will furnish to the ambulatory surgical facility, the classes to which such benefits will be furnished, and the amount of reimbursement.

[197.300. Sections 197.300 to 197.366 shall be known as the "Missouri Certificate of Need Law".]

[197.305. As used in sections 197.300 to 197.366, the following terms mean:

(1) "Affected persons", the person proposing the development of a new institutional health service, the public to be served, and health care facilities within the service area in which the proposed new health care service is to be developed;

(2) "Agency", the certificate of need program of the Missouri department of health and senior services;

(3) "Capital expenditure", an expenditure by or on behalf of a health care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

(4) "Certificate of need", a written certificate issued by the committee setting forth the committee's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by sections 197.300 to 197.366;

(5) "Develop", to undertake those activities which on their completion will result in the offering of a new institutional health service or the incurring of a financial

obligation in relation to the offering of such a service;

(6) "Expenditure minimum" shall mean:

(a) For beds in existing or proposed health care facilities licensed pursuant to chapter 198 and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, six hundred thousand dollars in the case of capital expenditures, or four hundred thousand dollars in the case of major medical equipment, provided, however, that prior to January 1, 2003, the expenditure minimum for beds in such a facility and long-term care beds in a hospital described in section 198.012 shall be zero, subject to the provisions of subsection 7 of section 197.318;

(b) For beds or equipment in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), the expenditure minimum shall be zero; and

(c) For health care facilities, new institutional health services or beds not described in paragraph (a) or (b) of this subdivision one million dollars in the case of capital expenditures, excluding major medical equipment, and one million dollars in the case of medical equipment;

(7) "Health service area", a geographic region appropriate for the effective planning and development of health services, determined on the basis of factors including population and the availability of resources, consisting of a population of not less than five hundred thousand or more than three million;

(8) "Major medical equipment", medical equipment used for the provision of medical and other health services;

(9) "New institutional health service":

(a) The development of a new health care facility costing in excess of the applicable expenditure minimum;

(b) The acquisition, including acquisition by lease, of any health care facility, or major medical equipment costing in excess of the expenditure minimum;

(c) Any capital expenditure by or on behalf of a health care facility in excess of the expenditure minimum;

(d) Predevelopment activities as defined in subdivision (12) hereof costing in excess of one hundred fifty thousand dollars;

(e) Any change in licensed bed capacity of a health care facility licensed under chapter 198 which increases the total number of beds by more than ten or more than ten percent of total bed capacity, whichever is less, over a two-year

84 period, provided that any such health care
85 facility seeking a nonapplicability review for
86 an increase in total beds or total bed capacity
87 in an amount less than described in this
88 paragraph shall be eligible for such review only
89 if the facility has had no patient care class I
90 deficiencies within the last eighteen months and
91 has maintained at least an eighty-five percent
92 average occupancy rate for the previous six
93 quarters;

94 (f) Health services, excluding home health
95 services, which are offered in a health care
96 facility and which were not offered on a regular
97 basis in such health care facility within the
98 twelve-month period prior to the time such
99 services would be offered;

100 (g) A reallocation by an existing health
101 care facility of licensed beds among major types
102 of service or reallocation of licensed beds from
103 one physical facility or site to another by more
104 than ten beds or more than ten percent of total
105 licensed bed capacity, whichever is less, over a
106 two-year period;

107 (10) "Nonsubstantive projects", projects
108 which do not involve the addition, replacement,
109 modernization or conversion of beds or the
110 provision of a new health service but which
111 include a capital expenditure which exceeds the
112 expenditure minimum and are due to an act of God
113 or a normal consequence of maintaining health
114 care services, facility or equipment;

115 (11) "Person", any individual, trust,
116 estate, partnership, corporation, including
117 associations and joint stock companies, state or
118 political subdivision or instrumentality
119 thereof, including a municipal corporation;

120 (12) "Predevelopment activities",
121 expenditures for architectural designs, plans,
122 working drawings and specifications, and any
123 arrangement or commitment made for financing;
124 but excluding submission of an application for a
125 certificate of need.]

2 [197.310. 1. The "Missouri Health
3 Facilities Review Committee" is hereby
4 established. The agency shall provide clerical
5 and administrative support to the committee.
6 The committee may employ additional staff as it
7 deems necessary.

8 2. The committee shall be composed of:

9 (1) Two members of the senate appointed by
10 the president pro tem, who shall be from
11 different political parties; and

12 (2) Two members of the house of
13 representatives appointed by the speaker, who
shall be from different political parties; and

14 (3) Five members appointed by the governor
15 with the advice and consent of the senate, not
16 more than three of whom shall be from the same
17 political party.

18 3. No business of this committee shall be
19 performed without a majority of the full body.

20 4. The members shall be appointed as soon
21 as possible after September 28, 1979. One of
22 the senate members, one of the house members and
23 three of the members appointed by the governor
24 shall serve until January 1, 1981, and the
25 remaining members shall serve until January 1,
26 1982. All subsequent members shall be appointed
27 in the manner provided in subsection 2 of this
28 section and shall serve terms of two years.

29 5. The committee shall elect a chairman at
30 its first meeting which shall be called by the
31 governor. The committee shall meet upon the
32 call of the chairman or the governor.

33 6. The committee shall review and approve
34 or disapprove all applications for a certificate
35 of need made under sections 197.300 to 197.366.
36 It shall issue reasonable rules and regulations
37 governing the submission, review and disposition
38 of applications.

39 7. Members of the committee shall serve
40 without compensation but shall be reimbursed for
41 necessary expenses incurred in the performance
42 of their duties.

43 8. Notwithstanding the provisions of
44 subsection 4 of section 610.025, the proceedings
45 and records of the facilities review committee
46 shall be subject to the provisions of chapter
47 610.]

2 [197.311. No member of the Missouri health
3 facilities review committee may accept a
4 political donation from any applicant for a
license.]

2 [197.312. A certificate of need shall not
3 be required for any institution previously owned
4 and operated for or in behalf of a city not
5 within a county which chooses to be licensed as
6 a facility defined under subdivision (22) or
7 (23) of section 198.006 for a facility of ninety
8 beds or less that is owned or operated by a not-
9 for-profit corporation which is exempt from
10 federal income tax as an organization described
11 in section 501(c)(3) of the Internal Revenue
12 Code of 1986, which is controlled directly by a
13 religious organization and which has received
14 approval by the department of health and senior
15 services of plans for construction of such
16 facility by August 1, 1995, and is licensed by
17 the department of health and senior services by
18 July 1, 1996, as a facility defined under
subdivision (22) or (23) of section 198.006 or

19 for a facility, serving exclusively mentally
20 ill, homeless persons, of sixteen beds or less
21 that is owned or operated by a not-for-profit
22 corporation which is exempt from federal income
23 tax which is described in section 501(c)(3) of
24 the Internal Revenue Code of 1986, which is
25 controlled directly by a religious organization
26 and which has received approval by the
27 department of health and senior services of
28 plans for construction of such facility by May
29 1, 1996, and is licensed by the department of
30 health and senior services by July 1, 1996, as a
31 facility defined under subdivision (22) or (23)
32 of section 198.006 or an assisted living
33 facility located in a city not within a county
34 operated by a not for profit corporation which
35 is exempt from federal income tax which is
36 described in section 501(c)(3) of the Internal
37 Revenue Code of 1986, which is controlled
38 directly by a religious organization and which
39 is licensed for one hundred beds or less on or
40 before August 28, 1997.]

2 [197.315. 1. Any person who proposes to
3 develop or offer a new institutional health
4 service within the state must obtain a
5 certificate of need from the committee prior to
6 the time such services are offered.

7 2. Only those new institutional health
8 services which are found by the committee to be
9 needed shall be granted a certificate of need.
10 Only those new institutional health services
11 which are granted certificates of need shall be
12 offered or developed within the state. No
13 expenditures for new institutional health
14 services in excess of the applicable expenditure
15 minimum shall be made by any person unless a
16 certificate of need has been granted.

17 3. After October 1, 1980, no state agency
18 charged by statute to license or certify health
19 care facilities shall issue a license to or
20 certify any such facility, or distinct part of
21 such facility, that is developed without
22 obtaining a certificate of need.

23 4. If any person proposes to develop any
24 new institutional health care service without a
25 certificate of need as required by sections
26 197.300 to 197.366, the committee shall notify
27 the attorney general, and he shall apply for an
28 injunction or other appropriate legal action in
29 any court of this state against that person.

30 5. After October 1, 1980, no agency of
31 state government may appropriate or grant funds
32 to or make payment of any funds to any person or
33 health care facility which has not first
34 obtained every certificate of need required
pursuant to sections 197.300 to 197.366.

35 6. A certificate of need shall be issued
36 only for the premises and persons named in the
37 application and is not transferable except by
38 consent of the committee.

39 7. Project cost increases, due to changes
40 in the project application as approved or due to
41 project change orders, exceeding the initial
42 estimate by more than ten percent shall not be
43 incurred without consent of the committee.

44 8. Periodic reports to the committee shall
45 be required of any applicant who has been
46 granted a certificate of need until the project
47 has been completed. The committee may order the
48 forfeiture of the certificate of need upon
49 failure of the applicant to file any such report.

50 9. A certificate of need shall be subject
51 to forfeiture for failure to incur a capital
52 expenditure on any approved project within six
53 months after the date of the order. The
54 applicant may request an extension from the
55 committee of not more than six additional months
56 based upon substantial expenditure made.

57 10. Each application for a certificate of
58 need must be accompanied by an application fee.
59 The time of filing commences with the receipt of
60 the application and the application fee. The
61 application fee is one thousand dollars, or one-
62 tenth of one percent of the total cost of the
63 proposed project, whichever is greater. All
64 application fees shall be deposited in the state
65 treasury. Because of the loss of federal funds,
66 the general assembly will appropriate funds to
67 the Missouri health facilities review committee.

68 11. In determining whether a certificate
69 of need should be granted, no consideration
70 shall be given to the facilities or equipment of
71 any other health care facility located more than
72 a fifteen-mile radius from the applying facility.

73 12. When a nursing facility shifts from a
74 skilled to an intermediate level of nursing
75 care, it may return to the higher level of care
76 if it meets the licensure requirements, without
77 obtaining a certificate of need.

78 13. In no event shall a certificate of
79 need be denied because the applicant refuses to
80 provide abortion services or information.

81 14. A certificate of need shall not be
82 required for the transfer of ownership of an
83 existing and operational health facility in its
84 entirety.

85 15. A certificate of need may be granted
86 to a facility for an expansion, an addition of
87 services, a new institutional service, or for a
88 new hospital facility which provides for
89 something less than that which was sought in the
90 application.

16. The provisions of this section shall not apply to facilities operated by the state, and appropriation of funds to such facilities by the general assembly shall be deemed in compliance with this section, and such facilities shall be deemed to have received an appropriate certificate of need without payment of any fee or charge. The provisions of this subsection shall not apply to hospitals operated by the state and licensed under this chapter, except for department of mental health state-operated psychiatric hospitals.

17. Notwithstanding other provisions of this section, a certificate of need may be issued after July 1, 1983, for an intermediate care facility operated exclusively for the intellectually disabled.

18. To assure the safe, appropriate, and cost-effective transfer of new medical technology throughout the state, a certificate of need shall not be required for the purchase and operation of:

(1) Research equipment that is to be used in a clinical trial that has received written approval from a duly constituted institutional review board of an accredited school of medicine or osteopathy located in Missouri to establish its safety and efficacy and does not increase the bed complement of the institution in which the equipment is to be located. After the clinical trial has been completed, a certificate of need must be obtained for continued use in such facility; or

(2) Equipment that is to be used by an academic health center operated by the state in furtherance of its research or teaching missions.]

[197.316. 1. The provisions of subsection 10 of section 197.315 and sections 197.317 and 197.318 shall not apply to facilities which are licensed pursuant to the provisions of chapter 198, which are designed and operated exclusively for the care and treatment of persons with acquired human immunodeficiency syndrome, AIDS.

2. If a facility is granted a certificate of need and is found to be exempt from the provisions of subsection 10 of section 197.315 and sections 197.317 and 197.318 pursuant to the provisions of subsection 1 of this section, then only AIDS patients shall be residents of such facility and no others.

3. Any facility that violates the provisions of subsection 2 of this section shall be liable for a fine of one hundred dollars per resident per day for each such violation.

19 4. The attorney general shall, upon
20 request of the department of health and senior
21 services, bring an action in a circuit court of
22 competent jurisdiction for violation of this
23 section.]

2 [197.318. 1. As used in this section, the
3 term "licensed and available" means beds which
4 are actually in place and for which a license
5 has been issued.

6 2. The committee shall review all letters
7 of intent and applications for long-term care
8 hospital beds meeting the requirements described
9 in 42 CFR, Section 412.23(e) under its criteria
10 and standards for long-term care beds.

11 3. Sections 197.300 to 197.366 shall not
12 be construed to apply to litigation pending in
13 state court on or before April 1, 1996, in which
14 the Missouri health facilities review committee
15 is a defendant in an action concerning the
16 application of sections 197.300 to 197.366 to
17 long-term care hospital beds meeting the
18 requirements described in 42 CFR, Section
19 412.23(e).

20 4. Notwithstanding any other provision of
21 this chapter to the contrary:

22 (1) A facility licensed pursuant to
23 chapter 198 may increase its licensed bed
24 capacity by:

25 (a) Submitting a letter of intent to
26 expand to the department of health and senior
27 services and the health facilities review
28 committee;

29 (b) Certification from the department of
30 health and senior services that the facility:

31 a. Has no patient care class I
32 deficiencies within the last eighteen months; and

33 b. Has maintained a ninety-percent average
34 occupancy rate for the previous six quarters;

35 (c) Has made an effort to purchase beds
36 for eighteen months following the date the
37 letter of intent to expand is submitted pursuant
38 to paragraph (a) of this subdivision. For
39 purposes of this paragraph, an "effort to
40 purchase" means a copy certified by the offeror
41 as an offer to purchase beds from another
42 licensed facility in the same licensure
43 category; and

44 (d) If an agreement is reached by the
45 selling and purchasing entities, the health
46 facilities review committee shall issue a
47 certificate of need for the expansion of the
48 purchaser facility upon surrender of the
49 seller's license; or

50 (e) If no agreement is reached by the
selling and purchasing entities, the health

facilities review committee shall permit an expansion for:

a. A facility with more than forty beds may expand its licensed bed capacity within the same licensure category by twenty-five percent or thirty beds, whichever is greater, if that same licensure category in such facility has experienced an average occupancy of ninety-three percent or greater over the previous six quarters;

b. A facility with fewer than forty beds may expand its licensed bed capacity within the same licensure category by twenty-five percent or ten beds, whichever is greater, if that same licensure category in such facility has experienced an average occupancy of ninety-two percent or greater over the previous six quarters;

c. A facility adding beds pursuant to subparagraphs a. or b. of this paragraph shall not expand by more than fifty percent of its then licensed bed capacity in the qualifying licensure category;

(2) Any beds sold shall, for five years from the date of relicensure by the purchaser, remain unlicensed and unused for any long-term care service in the selling facility, whether they do or do not require a license;

(3) The beds purchased shall, for two years from the date of purchase, remain in the bed inventory attributed to the selling facility and be considered by the department of social services as licensed and available for purposes of this section;

(4) Any residential care facility licensed pursuant to chapter 198 may relocate any portion of such facility's current licensed beds to any other facility to be licensed within the same licensure category if both facilities are under the same licensure ownership or control, and are located within six miles of each other;

(5) A facility licensed pursuant to chapter 198 may transfer or sell individual long-term care licensed beds to facilities qualifying pursuant to paragraphs (a) and (b) of subdivision (1) of this subsection. Any facility which transfers or sells licensed beds shall not expand its licensed bed capacity in that licensure category for a period of five years from the date the licensure is relinquished.

5. Any existing licensed and operating health care facility offering long-term care services may replace one-half of its licensed beds at the same site or a site not more than thirty miles from its current location if, for at least the most recent four consecutive

calendar quarters, the facility operates only fifty percent of its then licensed capacity with every resident residing in a private room. In such case:

(1) The facility shall report to the health and senior services vacant beds as unavailable for occupancy for at least the most recent four consecutive calendar quarters;

(2) The replacement beds shall be built to private room specifications and only used for single occupancy; and

(3) The existing facility and proposed facility shall have the same owner or owners, regardless of corporate or business structure, and such owner or owners shall stipulate in writing that the existing facility beds to be replaced will not later be used to provide long-term care services. If the facility is being operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.

6. Nothing in this section shall prohibit a health care facility licensed pursuant to chapter 198 from being replaced in its entirety within fifteen miles of its existing site so long as the existing facility and proposed or replacement facility have the same owner or owners regardless of corporate or business structure and the health care facility being replaced remains unlicensed and unused for any long-term care services whether they do or do not require a license from the date of licensure of the replacement facility.]

[197.320. The committee shall have the power to promulgate reasonable rules, regulations, criteria and standards in conformity with this section and chapter 536 to meet the objectives of sections 197.300 to 197.366 including the power to establish criteria and standards to review new types of equipment or service. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in sections 197.300 to 197.366 shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter

24 536 to review, to delay the effective date or to
25 disapprove and annul a rule are subsequently
26 held unconstitutional, then the grant of
27 rulemaking authority and any rule proposed or
28 adopted after August 28, 1999, shall be invalid
29 and void.】

2 【197.325. Any person who proposes to
3 develop or offer a new institutional health
4 service shall submit a letter of intent to the
5 committee at least thirty days prior to the
filing of the application.】

2 【197.326. 1. Any person who is paid
3 either as part of his or her normal employment
4 or as a lobbyist to support or oppose any
5 project before the health facilities review
6 committee shall register as a lobbyist pursuant
7 to chapter 105 and shall also register with the
8 staff of the health facilities review committee
9 for every project in which such person has an
10 interest and indicate whether such person
11 supports or opposes the named project. The
12 registration shall also include the names and
13 addresses of any person, firm, corporation or
14 association that the person registering
15 represents in relation to the named project.
16 Any person violating the provisions of this
17 subsection shall be subject to the penalties
18 specified in section 105.478.】

19 2. A member of the general assembly who
20 also serves as a member of the health facilities
21 review committee is prohibited from soliciting
22 or accepting campaign contributions from any
23 applicant or person speaking for an applicant or
24 any opponent to any application or persons
25 speaking for any opponent while such application
26 is pending before the health facilities review
committee.】

27 3. Any person regulated by chapter 197 or
28 198 and any officer, attorney, agent and
29 employee thereof, shall not offer to any
30 committee member or to any person employed as
31 staff to the committee, any office, appointment
32 or position, or any present, gift, entertainment
33 or gratuity of any kind or any campaign
34 contribution while such application is pending
35 before the health facilities review committee.
36 Any person guilty of knowingly violating the
37 provisions of this section shall be punished as
38 follows: For the first offense, such person is
39 guilty of a class B misdemeanor; and for the
40 second and subsequent offenses, such person is
41 guilty of a class E felony.】

2 【197.327. 1. If a facility is granted a
3 certificate of need pursuant to sections 197.300
to 197.365 based on an application stating a

4 need for additional Medicaid beds, such beds
5 shall be used for Medicaid patients and no other.

6 2. Any person who violates the provisions
7 of subsection 1 of this section shall be liable
8 to the state for civil penalties of one hundred
9 dollars for every day of such violation. Each
10 nonMedicaid patient placed in a Medicaid bed
11 shall constitute a separate violation.

12 3. The attorney general shall, upon the
13 request of the department, bring an action in a
14 circuit court of competent jurisdiction to
15 recover the civil penalty. The department may
16 bring such an action itself. The civil action
17 may be brought in the circuit court of Cole
18 County or, at the option of the director, in
19 another county which has venue of an action
20 against the person under other provisions of
21 law.]

[197.330. 1. The committee shall:

2 (1) Notify the applicant within fifteen
3 days of the date of filing of an application as
4 to the completeness of such application;

5 (2) Provide written notification to
6 affected persons located within this state at
7 the beginning of a review. This notification
8 may be given through publication of the review
9 schedule in all newspapers of general
10 circulation in the area to be served;

11 (3) Hold public hearings on all
12 applications when a request in writing is filed
13 by any affected person within thirty days from
14 the date of publication of the notification of
15 review;

16 (4) Within one hundred days of the filing
17 of any application for a certificate of need,
18 issue in writing its findings of fact,
19 conclusions of law, and its approval or denial
20 of the certificate of need; provided, that the
21 committee may grant an extension of not more
22 than thirty days on its own initiative or upon
23 the written request of any affected person;

24 (5) Cause to be served upon the applicant,
25 the respective health system agency, and any
26 affected person who has filed his prior request
27 in writing, a copy of the aforesaid findings,
28 conclusions and decisions;

29 (6) Consider the needs and circumstances
30 of institutions providing training programs for
31 health personnel;

32 (7) Provide for the availability, based on
33 demonstrated need, of both medical and
34 osteopathic facilities and services to protect
35 the freedom of patient choice; and

36 (8) Establish by regulation procedures to
37 review, or grant a waiver from review,
38 nonsubstantive projects.

39 The term "filed" or "filing" as used in
40 this section shall mean delivery to the staff of
41 the health facilities review committee the
42 document or documents the applicant believes
43 constitute an application.

44 2. Failure by the committee to issue a
45 written decision on an application for a
46 certificate of need within the time required by
47 this section shall constitute approval of and
48 final administrative action on the application,
49 and is subject to appeal pursuant to section
50 197.335 only on the question of approval by
51 operation of law.]

2 [197.335. Within thirty days of the
3 decision of the committee, the applicant may
4 file an appeal to be heard de novo by the
5 administrative hearing commissioner, the circuit
6 court of Cole County or the circuit court in the
7 county within which such health care service or
facility is proposed to be developed.]

2 [197.340. Any health facility providing a
3 health service must notify the committee of any
4 discontinuance of any previously provided health
5 care service, a decrease in the number of
6 licensed beds by ten percent or more, or the
7 change in licensure category for any such
facility.]

2 [197.345. Any health facility with a
3 project for facilities or services for which a
4 binding construction or purchase contract has
5 been executed prior to October 1, 1980, or
6 health care facility which has commenced
7 operations prior to October 1, 1980, shall be
8 deemed to have received a certificate of need,
9 except that such certificate of need shall be
10 subject to forfeiture under the provisions of
subsections 8 and 9 of section 197.315.]

2 [197.355. The legislature may not
3 appropriate any money for capital expenditures
4 for health care facilities until a certificate
of need has been issued for such expenditures.]

2 [197.357. For the purposes of
3 reimbursement under section 208.152, project
4 costs for new institutional health services in
5 excess of ten percent of the initial project
6 estimate whether or not approval was obtained
7 under subsection 7 of section 197.315 shall not
8 be eligible for reimbursement for the first
9 three years that a facility receives payment for
10 services provided under section 208.152. The
11 initial estimate shall be that amount for which
12 the original certificate of need was obtained
13 or, in the case of facilities for which a
binding construction or purchase contract was

14 executed prior to October 1, 1980, the amount of
15 that contract. Reimbursement for these excess
16 costs after the first three years shall not be
17 made until a certificate of need has been
18 granted for the excess project costs. The
19 provisions of this section shall apply only to
20 facilities which file an application for a
21 certificate of need or make application for cost-
22 overrun review of their original application or
23 waiver after August 13, 1982.]

2 [197.366. The term "health care
3 facilities" in sections 197.300 to 197.366 shall
4 mean:

- 4 (1) Facilities licensed under chapter 198;
- 5 (2) Long-term care beds in a hospital as
6 described in subdivision (3) of subsection 1 of
7 section 198.012;
- 8 (3) Long-term care hospitals or beds in a
9 long-term care hospital meeting the requirements
10 described in 42 CFR, section 412.23(e); and
11 (4) Construction of a new hospital as
12 defined in chapter 197.]

2 [197.367. Upon application for renewal by
3 any residential care facility or assisted living
4 facility which on the effective date of this act
5 has been licensed for more than five years, is
6 licensed for more than fifty beds and fails to
7 maintain for any calendar year its occupancy
8 level above thirty percent of its then licensed
9 beds, the department of health and senior
10 services shall license only fifty beds for such
11 facility.]

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