

FIRST REGULAR SESSION

# SENATE BILL NO. 303

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR EIGEL.

0419S.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, 2 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 3 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 4 197.366, 197.367, 197.705, 198.530, 208.169, and 354.095, RSMo, 5 are repealed and four new sections enacted in lieu thereof, to 6 be known as sections 197.705, 198.530, 208.169, and 354.095, to 7 read as follows:

197.705. All hospitals and health care facilities[, 2 defined in sections 197.020 and 197.305] **licensed under** 3 **chapters 197 and 198**, shall require all personnel providing 4 services in such facilities to wear identification badges 5 while acting within the scope of their employment. The 6 identification badges of all personnel shall prominently 7 display the licensure status of such personnel.

198.530. 1. If an enrollee in a managed care 2 organization is also a resident in a long-term care facility 3 licensed pursuant to chapter 198, or a continuing care 4 retirement community, [as defined in section 197.305,] such 5 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;

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

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

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

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

39           b. Reasonable construction or acquisition cost  
40 computed by applying the regional Dodge Construction Index  
41 for 1981 with a trend factor, if necessary, or another  
42 current construction cost measure multiplied by one hundred  
43 eight percent as an allowance for fees authorized as  
44 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

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

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

2 [197.300. Sections 197.300 to 197.366  
3 shall be known as the "Missouri Certificate of  
Need Law".]

2 [197.305. As used in sections 197.300 to  
197.366, the following terms mean:

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

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

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

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

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

27 obligation in relation to the offering of such a  
28 service;

29 (6) "Expenditure minimum" shall mean:

30 (a) For beds in existing or proposed  
31 health care facilities licensed pursuant to  
32 chapter 198 and long-term care beds in a  
33 hospital as described in subdivision (3) of  
34 subsection 1 of section 198.012, six hundred  
35 thousand dollars in the case of capital  
36 expenditures, or four hundred thousand dollars  
37 in the case of major medical equipment,  
38 provided, however, that prior to January 1,  
39 2003, the expenditure minimum for beds in such a  
40 facility and long-term care beds in a hospital  
41 described in section 198.012 shall be zero,  
42 subject to the provisions of subsection 7 of  
43 section 197.318;

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

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

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

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

65 (9) "New institutional health service":

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

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

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

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

79 (e) Any change in licensed bed capacity of  
80 a health care facility licensed under chapter  
81 198 which increases the total number of beds by  
82 more than ten or more than ten percent of total  
83 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.

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

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

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

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

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

2 [197.316. 1. The provisions of subsection  
3 10 of section 197.315 and sections 197.317 and  
4 197.318 shall not apply to facilities which are  
5 licensed pursuant to the provisions of chapter  
6 198, which are designed and operated exclusively  
7 for the care and treatment of persons with  
8 acquired human immunodeficiency syndrome, AIDS.

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

16 3. Any facility that violates the  
17 provisions of subsection 2 of this section shall  
18 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

51 facilities review committee shall permit an  
52 expansion for:

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

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

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

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

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

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

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

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

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

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

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

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

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

2 [197.320. The committee shall have the  
3 power to promulgate reasonable rules,  
4 regulations, criteria and standards in  
5 conformity with this section and chapter 536 to  
6 meet the objectives of sections 197.300 to  
7 197.366 including the power to establish  
8 criteria and standards to review new types of  
9 equipment or service. Any rule or portion of a  
10 rule, as that term is defined in section  
11 536.010, that is created under the authority  
12 delegated in sections 197.300 to 197.366 shall  
13 become effective only if it complies with and is  
14 subject to all of the provisions of chapter 536  
15 and, if applicable, section 536.028. All  
16 rulemaking authority delegated prior to August  
17 28, 1999, is of no force and effect and  
18 repealed. Nothing in this section shall be  
19 interpreted to repeal or affect the validity of  
20 any rule filed or adopted prior to August 28,  
21 1999, if it fully complied with all applicable  
22 provisions of law. This section and chapter 536  
23 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  
6 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  
27 committee.]

28 3. Any person regulated by chapter 197 or  
29 198 and any officer, attorney, agent and  
30 employee thereof, shall not offer to any  
31 committee member or to any person employed as  
32 staff to the committee, any office, appointment  
33 or position, or any present, gift, entertainment  
34 or gratuity of any kind or any campaign  
35 contribution while such application is pending  
36 before the health facilities review committee.  
37 Any person guilty of knowingly violating the  
38 provisions of this section shall be punished as  
39 follows: For the first offense, such person is  
40 guilty of a class B misdemeanor; and for the  
41 second and subsequent offenses, such person is  
42 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  
4 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 this  
40 section shall mean delivery to the staff of the  
41 health facilities review committee the document  
42 or documents the applicant believes constitute  
43 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.]

✓