

FIRST REGULAR SESSION

SENATE BILL NO. 235

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time January 3, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0393S.03I

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.314, 197.315, 197.316, 197.317, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366 and 197.367, RSMo 2000, relating to Missouri health facilities review and certificate of need law, and to enact in lieu thereof fifteen new sections relating to the same subject, with penalty provisions.

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, 197.314, 197.315, 197.316, 197.317, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366 and 197.367, RSMo 2000, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 197.370, 197.372, 197.374, 197.376, 197.378, 197.380, 197.382, 197.384, 197.386, 197.388, 197.390, 197.392, 197.394, 197.396 and 197.398, to read as follows:

[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;

(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

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

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, RSMo, and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo, 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, RSMo, 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 care facilities", hospitals, health maintenance organizations, tuberculosis hospitals, psychiatric hospitals, intermediate care facilities, skilled nursing facilities, residential care facilities I and II, kidney disease treatment centers, including freestanding hemodialysis units, diagnostic imaging centers, radiation therapy centers and ambulatory surgical facilities, but excluding the private offices of physicians, dentists and other practitioners of the healing arts, and Christian Science sanatoriums, also known as Christian Science Nursing facilities listed and certified by the Commission for Accreditation of Christian Science Nursing Organization/Facilities, Inc., and facilities of not-for-profit corporations in existence on October 1, 1980, subject either to the provisions and regulations of Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-538, and any residential care facility I or residential care facility II operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue Code, as amended, which does not require the expenditure of public funds for purchase or operation, with a total licensed bed capacity of one hundred beds or fewer;

(8) "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;

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

(10) "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 (13) hereof costing in excess of one hundred fifty thousand dollars;

(e) Any change in licensed bed capacity of a health care facility 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 period;

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

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

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

(12) "Person", any individual, trust, estate, partnership, corporation, including associations and joint stock companies, state or political subdivision or instrumentality thereof, including a municipal corporation;

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

[197.310. 1. The "Missouri Health Facilities Review Committee" is hereby established. The agency shall provide clerical and administrative support to the

committee. The committee may employ additional staff as it deems necessary.

2. The committee shall be composed of:

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

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

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

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

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

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

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

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

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

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

[197.312. A certificate of need shall not be required for any institution previously owned and operated for or in behalf of a city not within a county which chooses to be licensed as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, for a facility of ninety beds or less that is owned or operated by a not-for-profit corporation which is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is licensed by the division of aging by July 1, 1996, as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, or for a facility, serving exclusively mentally ill, homeless persons, of sixteen beds or less

that is owned or operated by a not-for-profit corporation which is exempt from federal income tax which is described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which has received approval by the division of aging of plans for construction of such facility by May 1, 1996, and is licensed by the division of aging by July 1, 1996, as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, or a residential care facility II located in a city not within a county operated by a not for profit corporation which is exempt from federal income tax which is described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which is licensed for one hundred beds or less on or before August 28, 1997.]

[197.314. 1. The provisions of sections 197.300 to 197.366 shall not apply to any sixty-bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand and which district also has within its boundaries a skilled nursing facility.

2. The provisions of sections 197.300 to 197.366 shall not apply, as hereinafter stated, to a skilled nursing facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri general assembly, is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care. This exemption shall authorize no more than twenty additional skilled nursing beds at each of two facilities which do not have any skilled nursing beds as of January 1, 1999.]

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

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

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

4. If any person proposes to develop any new institutional health care service

without a certificate of need as required by sections 197.300 to 197.366, the committee shall notify the attorney general, and he shall apply for an injunction or other appropriate legal action in any court of this state against that person.

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

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

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

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

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

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

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

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

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

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

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

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 mentally retarded.

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 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.]

[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, RSMo, 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.

4. The attorney general shall, upon request of the department of health, bring an action in a circuit court of competent jurisdiction for violation of this section.]

[197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:

(1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;

(2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

(3) The reallocation of intermediate care facility or skilled nursing facility beds of existing licensed beds by transfer or sale of licensed beds between a hospital licensed

pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds. However, after January 1, 2003, nothing in this section shall prohibit the Missouri health facilities review committee from issuing a certificate of need for additional beds in existing health care facilities or for new beds in new health care facilities or for the reallocation of licensed beds, provided that no construction shall begin prior to January 1, 2004. The provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of this section.

2. The health facilities review committee shall utilize demographic data from the office of social and economic data analysis, or its successor organization, at the University of Missouri as their source of information in considering applications for new institutional long-term care facilities.]

[197.318. 1. The provisions of section 197.317 shall not apply to a residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility only where the department of social services has first determined that there presently exists a need for additional beds of that classification because the average occupancy of all licensed and available residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility beds exceeds ninety percent for at least four consecutive calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise appears to qualify for a certificate of need. The department's certification that there is no need for additional beds shall serve as the final determination and decision of the committee. In determining ninety percent occupancy, residential care facility I and II shall be one separate classification and intermediate care and skilled nursing facilities are another separate classification.

2. The Missouri health facilities review committee may, for any facility certified to it by the department, consider the predominant ethnic or religious composition of the residents to be served by that facility in considering whether to grant a certificate of need.

3. There shall be no expenditure minimum for facilities, beds, or services referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire January 1, 2003.

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

5. The provisions of section 197.317 shall not apply to any facility where at least ninety-five percent of the patients require diets meeting the dietary standards defined by section 196.165, RSMo.

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

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

8. Notwithstanding any other provision of this chapter to the contrary:

(1) A facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed capacity by:

(a) Submitting a letter of intent to expand to the division of aging and the health facilities review committee;

(b) Certification from the division of aging that the facility:

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

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

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

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

(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, RSMo, 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, RSMo, 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.

9. 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 division of aging 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.

10. Nothing in this section shall prohibit a health care facility licensed pursuant to chapter 198, RSMo, 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, RSMo,

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, RSMo, 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, RSMo, and, if applicable, section 536.028, RSMo. 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, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.]

[197.325. Any person who proposes to develop or offer a new institutional health service shall submit a letter of intent to the committee at least thirty days prior to the filing of the application.]

[197.326. 1. Any person who is paid either as part of his normal employment or as a lobbyist to support or oppose any project before the health facilities review committee shall register as a lobbyist pursuant to chapter 105, RSMo, and shall also register with the staff of the health facilities review committee for every project in which such person has an interest and indicate whether such person supports or opposes the named project. The registration shall also include the names and addresses of any person, firm, corporation or association that the person registering represents in relation to the named project. Any person violating the provisions of this subsection shall be subject to the penalties specified in section 105.478, RSMo.

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

3. Any person regulated by chapter 197 or 198, RSMo, and any officer, attorney, agent and employee thereof, shall not offer to any committee member or to any person employed as staff to the committee, any office, appointment or position, or any present, gift, entertainment or gratuity of any kind or any campaign contribution while such application is pending before the health facilities review committee. Any person guilty of knowingly violating the provisions of this section shall be punished as follows: For the first offense, such person is guilty of a class B misdemeanor; and for the second and subsequent offenses,

such person is guilty of a class D felony.]

[197.327. 1. If a facility is granted a certificate of need pursuant to sections 197.300 to 197.365 based on an application stating a need for additional Medicaid beds, such beds shall be used for Medicaid patients and no other.

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

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

[197.330. 1. The committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[197.357. For the purposes of reimbursement under section 208.152, RSMo, project costs for new institutional health services in excess of ten percent of the initial project estimate whether or not approval was obtained under subsection 7 of section 197.315 shall not be eligible for reimbursement for the first three years that a facility receives payment for services provided under section 208.152, RSMo. The initial estimate shall be that amount for which the original certificate of need was obtained or, in the case of facilities for which a binding construction or purchase contract was executed prior to October 1, 1980, the amount of that contract. Reimbursement for these excess costs after the first three years shall not be made until a certificate of need has been granted for the excess project costs. The provisions of this section shall apply only to facilities which file an application for a certificate of need or make application for cost-overrun review of their original application or waiver after August 13, 1982.]

[197.366. The provisions of subdivision (8) of section 197.305 to the contrary notwithstanding, after December 31, 2001, the term "health care facilities" in sections 197.300 to 197.366 shall mean:

- (1) Facilities licensed under chapter 198, RSMo;
- (2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo;

(3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR, section 412.23(e); and

(4) Construction of a new hospital as defined in chapter 197.]

[197.367. Upon application for renewal by any residential care facility I or II which on the effective date of this act has been licensed for more than five years, is licensed for more than fifty beds and fails to maintain for any calendar year its occupancy level above thirty percent of its then licensed beds, the division of aging shall license only fifty beds for such facility.]

197.370. Sections 197.370 to 197.398 shall be known as the "Missouri Health Facilities Review Law".

197.372. The "Office of Health Facilities Review", whose purpose is to achieve the highest level of health for Missourians through cost containment, unnecessary duplication, reasonable access and public accountability, is hereby established within the department of health.

197.374. As used in sections 197.370 to 197.398 the following terms mean:

(1) "Committee", as defined in section 197.376;

(2) "Develop", to undertake those activities which on their completion will result in the offering of a new institutional health services or the incurring of a financial obligation in relation to the offering of such a service;

(3) "Filed" or "filing", delivery to the staff of the committee an application as defined by rule and the appropriate application fee;

(4) "First-time services", includes the following that are proposed in a specific location or for a mobile unit:

(a) Magnetic resonance imaging (MRI), positron emission tomography (PET) and other emerging radiology technology;

(b) Open heart surgery;

(c) Cardiac catheterization labs;

(d) Lithotripsy units; or

(e) Gamma knife;

(5) "Health care facilities", hospitals, intermediate care facilities, skilled nursing facilities, diagnostic imaging centers, radiation therapy centers, ambulatory surgical facilities and short stay specialty units;

(6) "New institutional health service":

(a) The development of a new health care facility;

(b) The acquisition, including acquisition by lease, of any health care facility, or major medical equipment;

(c) Any change in a licensed bed capacity of a hospital that increases the total

number of beds by more than ten beds or more than ten percent of total bed capacity, whichever is less, over a two-year period;

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

(e) A reallocation by an existing health care facility of licensed beds from one physical facility or site to another by more than ten beds or more than ten percent of total licensed bed capacity, whichever is less, over a two-year period;

(7) "Nonreviewable projects", those renovation or replacement projects in a current location whose cost is below ten million dollars;

(8) "Nonsubstantive projects", projects which do not involve the addition, replacement, modernization or conversion of beds or the provision of a new institutional health service and are due to an act of God or a normal consequence of maintaining health care services, facility or equipment;

(9) "Person", any individual, trust, estate, partnership, corporation, including associations and joint stock companies, state or political subdivision or instrumentality of thereof, including a municipal corporation;

(10) "Review certification", 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 197.370 to 197.398;

(11) "Total 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 and includes but is not limited to land, buildings, capitol improvements and all other costs necessary to establish a first-time service or a new institutional health service.

197.376. 1. The "Missouri Health Facilities Review Committee" is hereby established. The office of health facilities review shall provide clerical and administrative support to the committee.

2. The committee shall be composed of:

(1) Seven members appointed by the governor with the advice and consent of the senate, not more than four of whom shall be from the same political party. Four members shall be appointed in odd numbered years and three members shall be appointed in even numbered years for two year terms, each serving no more than six years; and

(2) The director of the division of health standards and licensure within the department of health or his or her designee; and

(3) The director of the department of health or his or her designee.

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

4. The committee shall elect a chairman at the first meeting of each odd numbered year. The committee shall meet at least twice a year or as determined by rule.

5. Members shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

6. The proceedings and records of the committee shall be subject to the provisions of chapter 610, RSMo.

197.378. The health facilities review committee shall:

(1) Review and approve or disapprove all applications for a review certification made under sections 197.370 to 197.398. It shall issue reasonable rules and regulations governing the submission, review, and disposition of applications;

(2) Notify the applicant within fifteen days of the date of filing of an application as to the completeness of such application as defined by rule;

(3) Provide written notification to affected persons located within this state at the beginning of a review. The notification may be given through publication of the review schedule in all newspapers of general circulation in the area to be served;

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

(5) Within one hundred days of the filing of any application, issue in writing its findings of fact, conclusions of law, and its approval or denial of the review certification; provided, that the committee may grant an extension of not more than thirty days on its own initiative or upon the written request of any affected person;

(6) Send to the applicant a copy of the aforesaid findings, conclusions and decisions; copies shall be available to any person upon request;

(7) Consider the needs and circumstances of institutions providing training programs for health personnel;

(8) Consider the predominant ethnic, cultural, or religious compositions of the residents to be served by a health care facility in considering whether to grant a review certification;

(9) Establish by regulation procedures to review, or grant a waiver for review; nonsubstantive projects and nonreviewable.

197.380. 1. Any person who proposes to develop or offer a new institutional health service or a first-time service shall submit a letter of intent to the committee at least thirty days prior to the filing of the application.

2. An application fee must accompany each application for a review

certification. The time of filing commences with the receipt of the application and the fee. The fee is one thousand dollars, or one-tenth of one percent of the total project whichever is greater. All application fees shall be deposited in the state treasury. The general assembly will appropriate funds to the Missouri health facilities review committee.

197.382. Within thirty days of the decision of the committee, the applicant may file an appeal to be heard de novo by the administrative hearing commissioner. Subsequent appeal venue shall be the circuit court in the county within which such health care service or facility is proposed to be developed.

197.384. 1. For the purpose of submitting an application for review certification, any person who proposes to develop or offer a new institutional health service must obtain a review certification from the committee prior to the time such services are offered.

2. Any person who proposes a first-time service must obtain a review certification from the committee prior to the time such services are offered.

3. Any person who proposes to add new, not previously licensed, beds to an existing hospital, intermediate care facility or skilled nursing facility must obtain a review certification. This shall not preclude the transfer of already licensed beds as defined in section 197.374.

4. Only those new institution health services, first-time services, or addition of beds, that are found by the committee to meet the health needs of the community served, shall be granted a review certification.

5. A review certification shall be issued only for the premises and persons named in the application and is not transferable except by the consent of the committee.

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

7. Periodic reports to the committee shall be required of any applicant who has been granted a review certification until the project has been completed. The committee may order the forfeiture of the review certification upon failure of the applicant to file any such report.

8. A review certification shall be subject to forfeiture for failure to incur expenditures equal to ten percent of the total approved cost of any project within six months after the date of the order. The applicant may request an extension from the committee of not more than six additional months to avoid forfeiture.

9. No state agency charged by statute to license or certify health care facilities shall issue a license to or certify any such facility, or distinct part of such facility, that

is developed and is required to have a review certification, without first obtaining a review certification.

10. No state agency may appropriate or grant funds to or make payment of any funds to any person or health care facility that has not first obtained every review certification required pursuant to sections 197.370 to 197.398.

11. In no event shall a review certification be denied because the applicant refuses to provide abortion services or information.

12. A review certification shall not be required for the transfer of ownership of an existing and operational health care facility in its entirety.

13. A review certification may be granted for something less than that which was sought in the original application.

14. To assure the safe, appropriate, and cost-effective transfer of new medical technology throughout the state, a review certification shall not be required for the purchase and operation of 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 efficiency 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 review certification must be obtained for continued use in such facility.

197.386. Review certification is not required for:

(1) Facilities operated by the state and appropriation of funds to such facilities by the general assembly shall be in compliance, and such facilities shall be deemed to have received an appropriate review certification without any fee or charge;

(2) Facilities which are licensed pursuant to the provisions of chapter 198, RSMo, which are designed and operated exclusively for the care and treatment of persons with acquired human immunodeficiency syndrome (AIDS). Only AIDS patients shall be residents of such a facility and no others. Any facility that violates this provision shall be liable for a fine of one hundred dollars per resident per day for each such violation;

(3) Nonreviewable projects as per subdivision (9) of section 197.374.

197.388. A review certification shall not be issued until January 1, 2006, for:

(1) Additional intermediate care facility or skilled nursing facility beds above the number licensed by the state except those permitted pursuant to section 197.386;

(2) Beds in a licensed hospital to be reallocated on a temporary or a permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 41 C.F.R. section 412.233(e).

197.390. The department of health shall determine, by county, whether there presently exists a need for additional beds. The average occupancy of all licensed and

available intermediate care facility and skilled nursing facility beds must exceed ninety percent for at least four consecutive quarters in a particular county, and other considerations may include rural and urban distinctions, delivery of health care services, and population migration.

197.392. 1. An intermediate care facility or skilled nursing facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed capacity by:

(1) Submitting a letter of intent to expand to the division of aging and the committee;

(2) Certification from the division of aging that the facility:

(a) Has no final patient care class 1 deficiencies within the last eighteen months;

and

(b) Has maintained ninety percent average occupancy rate for the previous six quarters;

(3) Has made an effort to purchase beds for eighteen months following the date of the letter of intent to expand is submitted pursuant to paragraph (a) of this subdivision. An "effort to purchase" means a copy certified by the offerer as an offer to purchase beds from another licensed intermediate care or skilled nursing facility; and

(4) If an agreement is reached by the selling and purchasing parties, the committee shall issue a review certification for the expansion of the purchaser facility upon surrender of that portion of the seller's license; or

(5) If no agreement is reached by the selling and purchasing parties the committee shall permit expansion for no more than twenty-five percent of its then licensed capacity.

2. A residential care facility licensed pursuant to chapter 198, RSMo, for the purpose of continuum of care, may purchase licensed beds from a skilled nursing facility pursuant to subdivisions (1) to (4) of subsection 1 of this section. This purchase may be for no more than ten percent of the licensed residential care facility beds in the purchaser's facility at the time of transfer. The residential care facility must then obtain licensure to operate skilled nursing beds at its current location.

3. Any beds sold shall remain, for five years from the date of relicensure by the purchaser, unlicensed and unused for any skilled or intermediate care services in the selling facility.

4. Any facility that transfers or sells licensed beds shall not expand its licensed bed capacity for a period of five years from the date the licensure is relinquished.

5. Nothing in this section shall prohibit a health care facility licensed pursuant to chapter 198, RSMo, from being replaced in its entirety within fifteen miles of its existing site by its current owner.

197.394. 1. Any person who is paid to support or oppose any project before the committee shall register with the staff of the committee for every project in which such person has an interest. The registration shall also include the names and addresses of any person, firm, corporation or association that the person registering represents in relation to the named project. Any person violating the provisions of the subsection shall be subject to the penalties specified in section 105.478, RSMo.

2. Any person regulated by chapter 197 or 198, RSMo, and any officer, attorney, agent and employee thereof, shall not offer to any committee member or to any member of the committee staff, any office, appointment or position, or any present, gift, entertainment or gratuity of any kind while such application is pending before the committee. Any person guilty of knowingly violating the provisions of this section shall be punished as follows: For the first offense, such person is guilty of a class B misdemeanor; and for the second and subsequent offenses, such person is guilty of a class D felony.

197.396. For the purposes of reimbursement under section 208.152, RSMo, project costs for new institutional health services in excess of ten percent of the initial project estimate whether or not approval was obtained under subsection 6 of section 197.380 shall not be eligible for reimbursement for the first three years that a facility receives payment for services provided under section 208.152, RSMo. The initial estimate shall be that amount for which the original review certificate was obtained. Reimbursement for these excess costs after the first three years shall not be made until a review certification has been granted for the excess project costs. The provisions of this section shall apply only to facilities which file an application for a review certification or make application for cost-overrun review of their original application or waiver.

197.398. The committee shall have the power to promulgate reasonable rules, regulations, criteria and standards in conformity with this section and chapter 536, RSMo, to meet the objectives of sections 197.370 to 197.398 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, RSMo, that is created under the authority delegated in sections 197.370 to 197.398 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, sections 536.028, RSMo. All rulemaking authority delegated prior to August 28, 2001, 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, 2001, if it fully complied with all applicable provisions of the law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to

disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

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