

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1087

91ST GENERAL ASSEMBLY

Reported from the Committee on Pensions and General Laws, March 14, 2002, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4179S.02C

AN ACT

To repeal sections 197.305, 197.310, 197.311, 197.315, 197.317, 197.326, and 197.366, RSMo, and to enact in lieu thereof thirteen new sections relating to the certificate of need program of the department of health and senior services.

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

Section A. Sections 197.305, 197.310, 197.311, 197.315, 197.317, 197.326, and 197.366, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 197.305, 197.310, 197.315, 197.317, 197.326, 197.375, 197.378, 197.381, 197.384, 197.387, 197.390, 197.393, and 197.397 to read as follows:

197.305. As used in sections 197.300 to [197.366] **197.367**, 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 **institutional** health [care] service is to be developed;

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

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

(4) "Certificate of need", a written certificate issued by the committee setting forth the committee's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by sections 197.300 to [197.366] **197.367**;

(5) "Develop", to undertake those activities which on their completion will result in the

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

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] **long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo, long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR Section 412.23(e)**, 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 **new institutional** 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;

(h) A reallocation of hospital beds to long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo, by more than ten beds or ten percent of total licensed bed capacity of the hospital, 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 **institutional** 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.] **The department of health shall**

hire and administratively supervise the clerical and administrative support to the committee.

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] **197.367**. 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. No member of the Missouri health facilities review committee may accept a political donation from any applicant for a certificate of need or review certification.

9. 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.

197.315. 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] **197.367**, 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] **197.367**.

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 department of health and senior services for expenditures related to the operation of** 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 **care** facility in its entirety.

15. A certificate of need may be granted to a **health care** facility for an expansion, an addition of services, a new institutional **health** 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 **health care** 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.]

197.317. 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) **and (h)** 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.

197.326. 1. Any [person] **individual** 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,] **individual who registers pursuant to subsection 1 of this section, any applicant**, and any officer, attorney, agent and employee [thereof] **of such individual or applicant**, 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.

197.375. As used in sections 197.375 to 197.397, the following terms mean:

(1) **"Acute care facilities", hospitals, diagnostic imaging centers, radiation therapy centers, ambulatory surgical facilities, short stay specialty units, or facilities designed to house first-time services whether they are in a specific fixed location or a mobile unit;**

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

(3) **"Anesthesia and sedation", the administration to an individual, for any purpose, by any route, moderate or deep sedation as well as general, spinal, or other major regional anesthesia. Anesthesia and sedation does not include local anesthesia;**

(4) "Committee", the Missouri health facilities review committee established in section 197.310;

(5) "Commonly controlled", the acute care facility transferring the licensed beds and the acute care facility receiving the beds as part of the same control group of entities defined in Section 414(b) and (c) of the Internal Revenue Code, as in effect from time to time; however, a not-for-profit entity will be commonly controlled if the transferring acute care facility is the sole corporate member of the acute care facility receiving the transfer, or the acute care facility receiving the transfer is the sole corporate member of the acute care facility transferring the beds, or both the transferring and receiving acute care facilities having the same entity as their sole corporate member, and in all cases, the sole corporate member shall retain sufficient reserve powers to be able to significantly influence the actions and policies of the acute care facilities;

(6) "Cost", an expenditure by or on behalf of an acute care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, except for costs to lease property, buildings, or equipment necessary to establish a first-time service or a new institutional acute care service shall be included in the total project cost and any sales tax paid in the process of establishing such first-time service or new institutional acute care service shall be excluded from total project cost;

(7) "Develop", to undertake those activities which on their completion will result in the offering of a new institutional acute care service or a first-time service, or the incurring of a financial obligation in relation to the offering of such a service;

(8) "Expedited projects", those projects in which:

(a) The person seeking review certification is operating an acute care facility and proposes to develop a new institutional acute care service or first-time service for such facility if the proposed new institutional acute care service or first-time service is a service already being offered in an acute care facility in a contiguous state that does not have certificate of need laws that regulate the service already being offered by the acute care facility in the contiguous state; and

(b) The acute care facility proposing the new institutional acute care service or first-time service is located in a metropolitan statistical area within one hundred miles of the contiguous state in which the acute care facility in which the proposed service already being offered is located;

(9) "Filed" or "filing", delivery to the staff of the committee the document or documents an applicant believes constitutes an application and the appropriate application fee;

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

(a) Magnetic resonance imaging (MRI), positron emission tomography (PET), and linear acceleration (radiation therapy);

(b) Open-heart surgery;

(c) Cardiac catheterization labs;

(d) Lithotripsy units;

(e) Gamma knife;

(f) Ambulatory surgery operating room, including but not limited to gastrointestinal laboratories and endoscopy laboratories and any other acute care facilities where anesthesia and sedation occur;

(g) Computed tomography technology; or

(h) Other emerging medical equipment and related facilities that when their functionally related components are taken together, the cost exceeds three million dollars;

(11) "Maximum permissible distance":

(a) For an acute care facility located within a metropolitan statistical area, within one mile of the acute care facility's boundary wholly measured within the same county where the existing acute care facility is located;

(b) For an acute care facility located outside a metropolitan statistical area, within five miles of the acute care facility's boundary wholly measured within the same county where the existing acute care facility is located;

(12) "Metropolitan statistical area", as defined by the United States Office of Management and Budget according to standards published in the federal register on March 30, 1990, and as subsequently revised and applied to census bureau data;

(13) "New institutional acute care service":

(a) The development of a new acute care facility without regard to financing methodologies;

(b) The acquisition or development, without regard to financing methodologies, of any first-time service;

(c) Any change in a licensed bed capacity of an acute care service facility 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) A reallocation by an existing hospital of more than fifty licensed beds or more than fifty percent of total licensed bed capacity of the receiving hospital, whichever is less over the lifetime of the license, between two substantially similar hospitals that are related parties or commonly controlled. The total licensed bed

capacity of the receiving hospital shall be calculated as of August 28, 2002, or for a hospital licensed after August 28, 2002, the initial date of licensure;

(e) Renovation of an acute care facility in a current location whose cost is over twenty million dollars;

(14) "Nonsubstantive projects", projects that are due to an act of God and do not involve the addition, replacement, modernization, or conversion of beds or the provision of a new institutional acute care service or first-time service, but whose costs would otherwise be reviewable;

(15) "Notification projects":

(a) Emerging medical equipment and related facilities that when their functionally related components are taken together the cost is less than three million dollars;

(b) A reallocation by an existing hospital of fifty or fewer licensed beds or fifty percent or less of total licensed bed capacity of the receiving hospital, whichever is less over the lifetime of the license, between two substantially similar hospitals that are related parties or are commonly controlled;

(c) Renovation of an acute care facility in a current location whose cost is less than twenty million dollars; except that, if the renovation is less than three million dollars, no notification is required;

(d) Nonsubstantive projects;

(e) Projects pursuant to subsection 1 or 2 of section 197.387;

(f) Any project pursuant to section 197.390;

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

(17) "Related parties", those acute care facilities, regardless of incorporation, which are controlled by, under the control of, or commonly controlled with the acute care facility transferring the licensed beds and the acute care facility receiving the beds;

(18) "Review certification", a written certificate issued by the committee setting forth the committee's affirmative finding that a proposed project described in sections 197.375 to 197.397 sufficiently satisfies the criteria prescribed for such projects by sections 197.375 to 197.397.

197.378. The health facilities review committee for projects described in sections 197.375 to 197.397 shall:

(1) Review and approve or disapprove all applications for a review certification made pursuant to sections 197.375 to 197.397. The committee shall issue reasonable

rules 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. For any expedited project, the health facilities review committee shall, within forty-five days of the filing of any application for an expedited project, 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 twenty 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 an acute care facility in considering whether to grant a review certification;

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

(10) Failure by the committee to issue a written decision on an application for review certification within the time required by this section shall constitute approval of and the final administrative action on the application and shall be subject to appeal pursuant to section 197.387 only on the question of approval by operation of law.

197.381. 1. Any person who proposes to develop or offer a new institutional acute care 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 unless:

(1) The new institutional acute care service:

(a) Will wholly replace, within a defined and reasonable time period, an existing

acute care facility owned or operated by the person who would be required to submit a letter of intent;

(b) Is constructed on property within the maximum permissible distance from such existing acute care facility's boundary; and

(c) The license of the existing acute care facility will be terminated or transferred to the new acute care facility and the new acute care facility will be licensed upon approval by the department of health and senior services;

(2) The first-time service for which the person would otherwise be required to submit a letter of intent is the acquisition, development, or construction of a piece of equipment that:

(a) Is a replacement piece of equipment or an additional piece of equipment substantially similar to a piece of equipment for which a certificate of need or a review certificate has already been issued and is currently owned or operated by such person; and

(b) Will be placed in the same licensed location or licensed facility as the previously certified piece of equipment.

2. An application fee shall accompany each application for a review certification. The time of filing commences with the receipt of the application and the fee. The fee shall be 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 department of health and senior services for expenditures related to the operation of the health facilities review committee.

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

(1) Will wholly replace, within a defined and reasonable time period, an existing acute care facility owned or operated by the person who would be required to submit a letter of intent;

(2) Is constructed on property within the maximum permissible distance from such existing acute care facility's boundary; and

(3) The license of the existing acute care facility will be terminated or transferred to the new acute care facility and the new acute care facility will be licensed upon approval by the department of health and senior services.

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

unless the first-time service for which the person would otherwise be required to submit a letter of intent is the acquisition, development, or construction of a piece of equipment that:

(1) Is a replacement piece of equipment or an additional piece of equipment substantially similar to a piece of equipment for which a certificate of need or a review certificate has already been issued and is currently owned or operated by such person; and

(2) Will be placed in the same licensed location or licensed facility as the previously certified piece of equipment.

Any person who proposes to replace a facility described in subdivision (1), (2), or (3) of subsection 1 of this section shall, no later than sixty days immediately prior to the date of the initiation of the construction process to begin replacement, conduct a public hearing regarding the project. Notice of hearing shall be given by publication in major newspapers of general circulation in the area to be served for four consecutive weeks prior to the hearing date. The Missouri facilities review committee shall notify all licensed acute care facilities within the service area in which the proposed new institutional acute care service is to be developed not less than thirty days prior to the hearing date.

3. Any person who proposes to add new, not previously licensed, beds to an existing hospital shall obtain a review certification, but shall not preclude the addition or transfer of beds without review certification as defined in paragraphs (c) and (d) of subdivision (13) of section 197.375.

4. Any person who proposes to renovate an acute care facility in a current location whose cost is over twenty million dollars shall obtain a review certification.

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

6. 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.

7. Project cost increases, 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 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.

9. A review certification shall be subject to forfeiture for failure to incur

capital expenditures within twelve months after the date of the order. The applicant may request two extensions from the committee to avoid forfeiture. In any case, regardless of any extensions that may be granted, if after one year no capital expenditure has been made, the total statewide count of the services in question shall not reflect the units undeveloped.

10. No state agency charged by statute to license or certify acute 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.

11. No state agency shall appropriate or grant funds to or make payment of any funds to any person or acute care facility that has not first obtained every review certification required pursuant to sections 197.375 to 197.397.

12. If any person proposes to develop any new institutional health care service without a review certification as required by sections 197.375 to 197.397, the committee shall notify the attorney general and the attorney general shall seek an injunction or apply for other appropriate legal action in any court of this state against such person.

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

14. A review certification shall not be required for the transfer of ownership of an existing and operational acute care facility in its entirety or for the conversion by a hospital of mobile first-time service to a first-time service in a permanent fixed location if the hospital previously received a certificate of need or review certificate for the mobile first-time service.

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

16. 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.

17. The provisions of section 197.326 shall apply to projects described in sections 197.375 to 197.397.

197.387. Within thirty days of the decision of the committee, the applicant may

file an appeal pursuant to chapter 621, RSMo. Any subsequent appeal venue shall be the circuit court in the county within which such new institutional acute care service or first-time service is proposed to be developed, or the Cole County circuit court, at the applicant's discretion.

197.390. Review certification is not required for:

(1) Acute care facilities operated by the state. 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) Notification projects pursuant to subdivision (16) of section 197.375 or nonsubstantive projects pursuant to subdivision (15) of section 197.375; except that, any person who wishes to pursue a notification project shall notify the committee in writing advising the committee of the nature of the project, the statutory authorization for classification as a notification project, and submit a verified statement of facts in support of such classification.

197.393. For the purposes of reimbursement pursuant to section 208.152, RSMo, project costs for new institutional acute care services in excess of ten percent of the initial project estimate unless approval was obtained pursuant to subsection 8 of section 197.384 shall not be eligible for reimbursement for the first three years that a facility receives payment for services provided pursuant to 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.

197.397. 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 197.397 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 197.397 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, 2002, 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, 2002, 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, 2002, shall be invalid and void.

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

[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.]

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