

FIRST REGULAR SESSION

# SENATE BILL NO. 90

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 2, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0447S.011

## 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, 197.367, 197.705, 198.530, 198.531, and 208.169, RSMo, and to enact in lieu thereof four new sections relating to certificate of need.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.314, 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197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 198.531, and 208.169, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.705, 198.530, 198.531, and 208.169, to read as follows:

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

198.530. 1. If an enrollee in a managed care organization is also a resident in a long-term care facility licensed pursuant to chapter 198, or a continuing care retirement community, [as defined in section 197.305, RSMo,] such enrollee's managed care organization shall provide the enrollee with the option of receiving the covered service in the long-term care facility which serves as the enrollee's primary residence. For purposes of this section, "managed care

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

7 organization" means any organization that offers any health plan certified by the  
8 department of health and senior services designed to provide incentives to  
9 medical care providers to manage the cost and use of care associated with claims,  
10 including, but not limited to, a health maintenance organization and preferred  
11 provider organization. The resident enrollee's managed care organization shall  
12 reimburse the resident facility for those services which would otherwise be  
13 covered by the managed care organization if the following conditions apply:

14 (1) The facility is willing and able to provide the services to the resident;  
15 and

16 (2) The facility and those health care professionals delivering services to  
17 residents pursuant to this section meet the licensing and training standards as  
18 prescribed by law; and

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

20 (4) The facility and those health care professionals delivering services to  
21 residents pursuant to this section agree to abide by the terms and conditions of  
22 the health carrier's contracts with similar providers, abide by patient protection  
23 standards and requirements imposed by state or federal law for plan enrollees  
24 and meet the quality standards established by the health carrier for similar  
25 providers.

26 2. The managed care organization shall reimburse the resident facility at  
27 a rate of reimbursement not less than the Medicare allowable rate pursuant to  
28 Medicare rules and regulations.

29 3. The services in subsection 1 of this section shall include, but are not  
30 limited to, skilled nursing care, rehabilitative and other therapy services, and  
31 postacute care, as needed. Nothing in this section shall limit the managed care  
32 organization from utilizing contracted providers to deliver the services in the  
33 enrollee's resident facility.

34 4. A resident facility shall not prohibit a health carrier's participating  
35 providers from providing covered benefits to an enrollee in the resident facility.  
36 A resident facility or health care professional shall not impose any charges on an  
37 enrollee for any service that is ancillary to, a component of, or in support of the  
38 services provided under this section when the services are provided by a health  
39 carrier's participating provider, or otherwise create a disincentive for the use of  
40 the health carrier's participating providers. Any violation of the requirements of  
41 this subsection by the resident facility shall be considered abuse or neglect of the  
42 resident enrollee.

198.531. 1. The division of aging, in collaboration with qualified Missouri  
2 schools and universities, shall establish an aging-in-place pilot program at a  
3 maximum of four selected sites throughout the state which will provide a  
4 continuum of care for elders who need long-term care. For purposes of this  
5 section, "qualified Missouri schools and universities" means any Missouri school  
6 or university which has a school of nursing, a graduate nursing program, or any  
7 other similar program or specialized expertise in the areas of aging, long-term  
8 care or health services for the elderly.

9 2. The pilot program shall:

10 (1) Deliver a full range of physical and mental health services to residents  
11 in the least restrictive environment of choice to reduce the necessity of relocating  
12 such residents to other locations as their health care needs change;

13 (2) Base licensure on services provided rather than on facility type; and

14 (3) Be established in selected urban, rural and regional sites throughout  
15 the state.

16 3. The directors of the division of aging and division of medical services  
17 shall apply for all federal waivers necessary to provide Medicaid reimbursement  
18 for health care services received through the aging-in-place pilot program.

19 4. The division of aging shall monitor the pilot program and report to the  
20 general assembly on the effectiveness of such program, including quality of care,  
21 resident satisfaction and cost-effectiveness to include the cost equivalent of  
22 unpaid or volunteer labor.

23 5. Developments authorized by this section [shall be exempt from the  
24 provisions of sections 197.300 to 197.367, RSMo, and] shall be licensed by the  
25 division of aging.

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

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

10 (2) In the case of a newly built facility or part thereof which is less than  
11 two years of age and enters the Title XIX program under this chapter after July

12 1, 1983, a reimbursement rate shall be assigned based on the lesser of projected  
13 estimated operating costs or one hundred ten percent of the median rate for the  
14 facility's class to include urban and rural categories for each level of care  
15 including ICF only and SNF/ICF. The rates set under this provision shall be  
16 effective for a period of twelve months from the effective date of the provider  
17 agreement at which time the rate for the future year shall be set in accordance  
18 with reported costs of the facility recognized under the reimbursement plan and  
19 as provided in subdivisions (3) and (4) of this subsection. Rates set under this  
20 section may in no case exceed the maximum ceiling amounts in effect under the  
21 reimbursement regulation;

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

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

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

30 b. Reasonable construction or acquisition cost computed by applying the  
31 regional Dodge Construction Index for 1981 with a trend factor, if necessary, or  
32 another current construction cost measure multiplied by one hundred eight  
33 percent as an allowance for fees authorized as architectural or legal not included  
34 in the Dodge Index Value, multiplied by the square footage of the facility not to  
35 exceed three hundred twenty-five square feet per bed, multiplied by the ratio of  
36 forty minus the actual years of the age of the facility divided by forty; and  
37 multiplied by a return rate of twelve percent; and divided by ninety-three percent  
38 of the facility's total available beds times three hundred sixty-five days.

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

41 (c) The maximum allowable land area is defined as five acres for a facility  
42 with one hundred or less beds and one additional acre for each additional one  
43 hundred beds or fraction thereof for a facility with one hundred one or more beds.

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

45 a. For facilities with land areas at or below the maximum allowable land  
46 area, multiply the acquisition cost of the land by the return rate of twelve  
47 percent, divide by ninety-three percent of the facility's total available beds times

48 three hundred sixty-five days.

49 b. For facilities with land areas greater than the maximum allowable land  
50 area, divide the acquisition cost of the land by the total acres, multiply by the  
51 maximum allowable land area, multiply by the return rate of twelve percent,  
52 divide by ninety-three percent of the facility's total available beds times three  
53 hundred sixty-five days.

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

55 (4) If a provider does not provide the actual acquisition cost to determine  
56 a reimbursement rate under subparagraph a. of paragraph (a) of subdivision (3)  
57 of subsection 1 of this section, the sum of the building and building equipment  
58 rate, movable equipment rate, land rate, and working capital rate shall be set at  
59 a reimbursement rate of six dollars;

60 (5) For each state fiscal year a negotiated trend factor shall be applied to  
61 each facility's Title XIX per diem reimbursement rate. The trend factor shall be  
62 determined through negotiations between the department and the affected  
63 providers and is intended to hold the providers harmless against increase in cost.  
64 In no circumstances shall the negotiated trend factor to be applied to state funds  
65 exceed the health care finance administration market basket price index for that  
66 year. The provisions of this subdivision shall apply to fiscal year 1996 and  
67 thereafter.

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

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

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

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

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

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

12 and maintenance;

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

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

21 (6) "Expenditure minimum" shall mean:

22 (a) For beds in existing or proposed health care facilities  
23 licensed pursuant to chapter 198, RSMo, and long-term care beds  
24 in a hospital as described in subdivision (3) of subsection 1 of  
25 section 198.012, RSMo, six hundred thousand dollars in the case of  
26 capital expenditures, or four hundred thousand dollars in the case  
27 of major medical equipment, provided, however, that prior to  
28 January 1, 2003, the expenditure minimum for beds in such a  
29 facility and long-term care beds in a hospital described in section  
30 198.012, RSMo, shall be zero, subject to the provisions of  
31 subsection 7 of section 197.318;

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

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

40 (7) "Health care facilities", hospitals, health maintenance  
41 organizations, tuberculosis hospitals, psychiatric hospitals,  
42 intermediate care facilities, skilled nursing facilities, residential  
43 care facilities and assisted living facilities, kidney disease  
44 treatment centers, including freestanding hemodialysis units,  
45 diagnostic imaging centers, radiation therapy centers and  
46 ambulatory surgical facilities, but excluding the private offices of  
47 physicians, dentists and other practitioners of the healing arts, and

48 Christian Science sanatoriums, also known as Christian Science  
49 Nursing facilities listed and certified by the Commission for  
50 Accreditation of Christian Science Nursing Organization/Facilities,  
51 Inc., and facilities of not-for-profit corporations in existence on  
52 October 1, 1980, subject either to the provisions and regulations of  
53 Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186  
54 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C.  
55 401-538, and any residential care facility or assisted living facility  
56 operated by a religious organization qualified pursuant to Section  
57 501(c)(3) of the federal Internal Revenue Code, as amended, which  
58 does not require the expenditure of public funds for purchase or  
59 operation, with a total licensed bed capacity of one hundred beds  
60 or fewer;

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

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

68 (10) "New institutional health service":

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

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

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

76 (d) Predevelopment activities as defined in subdivision (13)  
77 hereof costing in excess of one hundred fifty thousand dollars;

78 (e) Any change in licensed bed capacity of a health care  
79 facility which increases the total number of beds by more than ten  
80 or more than ten percent of total bed capacity, whichever is less,  
81 over a two-year period;

82 (f) Health services, excluding home health services, which  
83 are offered in a health care facility and which were not offered on

84 a regular basis in such health care facility within the twelve-month  
85 period prior to the time such services would be offered;

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

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

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

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

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

5 2. The committee shall be composed of:

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

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

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

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

15 4. The members shall be appointed as soon as possible after



16 September 28, 1979. One of the senate members, one of the house  
17 members and three of the members appointed by the governor shall  
18 serve until January 1, 1981, and the remaining members shall  
19 serve until January 1, 1982. All subsequent members shall be  
20 appointed in the manner provided in subsection 2 of this section  
21 and shall serve terms of two years.

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

25 6. The committee shall review and approve or disapprove  
26 all applications for a certificate of need made under sections  
27 197.300 to 197.366. It shall issue reasonable rules and regulations  
28 governing the submission, review and disposition of applications.

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

32 8. Notwithstanding the provisions of subsection 4 of section  
33 610.025, RSMo, the proceedings and records of the facilities review  
34 committee shall be subject to the provisions of chapter 610, RSMo.]

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

[197.312. A certificate of need shall not be required for any  
2 institution previously owned and operated for or in behalf of a city  
3 not within a county which chooses to be licensed as a facility  
4 defined under subdivision (21) or (22) of section 198.006, RSMo, for  
5 a facility of ninety beds or less that is owned or operated by a  
6 not-for-profit corporation which is exempt from federal income tax  
7 as an organization described in section 501(c)(3) of the Internal  
8 Revenue Code of 1986, which is controlled directly by a religious  
9 organization and which has received approval by the division of  
10 aging of plans for construction of such facility by August 1, 1995,  
11 and is licensed by the division of aging by July 1, 1996, as a facility  
12 defined under subdivision (21) or (22) of section 198.006, RSMo, or  
13 for a facility, serving exclusively mentally ill, homeless persons, of  
14 sixteen beds or less that is owned or operated by a not-for-profit

15 corporation which is exempt from federal income tax which is  
16 described in section 501(c)(3) of the Internal Revenue Code of 1986,  
17 which is controlled directly by a religious organization and which  
18 has received approval by the division of aging of plans for  
19 construction of such facility by May 1, 1996, and is licensed by the  
20 division of aging by July 1, 1996, as a facility defined under  
21 subdivision (21) or (22) of section 198.006, RSMo, or an assisted  
22 living facility located in a city not within a county operated by a  
23 not for profit corporation which is exempt from federal income tax  
24 which is described in section 501(c)(3) of the Internal Revenue Code  
25 of 1986, which is controlled directly by a religious organization and  
26 which is licensed for one hundred beds or less on or before August  
27 28, 1997.]

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

9 2. The provisions of sections 197.300 to 197.366 shall not  
10 apply, as hereinafter stated, to a skilled nursing facility that is  
11 owned or operated by a not-for-profit corporation which was created  
12 by a special act of the Missouri general assembly, is exempt from  
13 federal income tax as an organization described in Section 501(c)(3)  
14 of the Internal Revenue Code of 1986, is owned by a religious  
15 organization and is to be operated as part of a continuing care  
16 retirement community offering independent living, residential care  
17 and skilled care. This exemption shall authorize no more than  
18 twenty additional skilled nursing beds at each of two facilities  
19 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  
2 new institutional health service within the state must obtain a  
3 certificate of need from the committee prior to the time such  
4 services are offered.

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

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

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

21           5. After October 1, 1980, no agency of state government  
22 may appropriate or grant funds to or make payment of any funds  
23 to any person or health care facility which has not first obtained  
24 every certificate of need required pursuant to sections 197.300 to  
25 197.366.

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

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

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

38           9. A certificate of need shall be subject to forfeiture for  
39 failure to incur a capital expenditure on any approved project  
40 within six months after the date of the order. The applicant may

41 request an extension from the committee of not more than six  
42 additional months based upon substantial expenditure made.

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

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

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

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

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

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

68 16. The provisions of this section shall not apply to  
69 facilities operated by the state, and appropriation of funds to such  
70 facilities by the general assembly shall be deemed in compliance  
71 with this section, and such facilities shall be deemed to have  
72 received an appropriate certificate of need without payment of any  
73 fee or charge.

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

77           retarded.

78           18. To assure the safe, appropriate, and cost-effective  
79           transfer of new medical technology throughout the state, a  
80           certificate of need shall not be required for the purchase and  
81           operation of research equipment that is to be used in a clinical trial  
82           that has received written approval from a duly constituted  
83           institutional review board of an accredited school of medicine or  
84           osteopathy located in Missouri to establish its safety and efficacy  
85           and does not increase the bed complement of the institution in  
86           which the equipment is to be located. After the clinical trial has  
87           been completed, a certificate of need must be obtained for  
88           continued use in such facility.]

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

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

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

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

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

3           (1) Additional residential care facility, assisted living  
4           facility, intermediate care facility or skilled nursing facility beds  
5           above the number then licensed by this state;

6           (2) Beds in a licensed hospital to be reallocated on a  
7           temporary or permanent basis to nursing care or beds in a

8 long-term care hospital meeting the requirements described in 42  
9 CFR, Section 412.23(e), excepting those which are not subject to a  
10 certificate of need pursuant to paragraphs (e) and (g) of subdivision  
11 (10) of section 197.305; nor

12 (3) The reallocation of intermediate care facility or skilled  
13 nursing facility beds of existing licensed beds by transfer or sale of  
14 licensed beds between a hospital licensed pursuant to this chapter  
15 or a nursing care facility licensed pursuant to chapter 198, RSMo;  
16 except for beds in counties in which there is no existing nursing  
17 care facility. No certificate of need shall be issued for the  
18 reallocation of existing residential care facility or assisted living  
19 facility, or intermediate care facilities operated exclusively for the  
20 mentally retarded to intermediate care or skilled nursing facilities  
21 or beds. However, after January 1, 2003, nothing in this section  
22 shall prohibit the Missouri health facilities review committee from  
23 issuing a certificate of need for additional beds in existing health  
24 care facilities or for new beds in new health care facilities or for the  
25 reallocation of licensed beds, provided that no construction shall  
26 begin prior to January 1, 2004. The provisions of subsections 16  
27 and 17 of section 197.315 shall apply to the provisions of this  
28 section.

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

[197.318. 1. The provisions of section 197.317 shall not  
2 apply to a residential care facility, assisted living facility,  
3 intermediate care facility or skilled nursing facility only where the  
4 department of social services has first determined that there  
5 presently exists a need for additional beds of that classification  
6 because the average occupancy of all licensed and available  
7 residential care facility, assisted living facility, intermediate care  
8 facility and skilled nursing facility beds exceeds ninety percent for  
9 at least four consecutive calendar quarters, in a particular county,  
10 and within a fifteen-mile radius of the proposed facility, and the

11 facility otherwise appears to qualify for a certificate of need. The  
12 department's certification that there is no need for additional beds  
13 shall serve as the final determination and decision of the  
14 committee. In determining ninety percent occupancy, residential  
15 care facility and assisted living facility shall be one separate  
16 classification and intermediate care and skilled nursing facilities  
17 are another separate classification.

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

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

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

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

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

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

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

46 (1) A facility licensed pursuant to chapter 198, RSMo, may

47 increase its licensed bed capacity by:

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

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

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

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

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

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

65 (e) If no agreement is reached by the selling and purchasing  
66 entities, the health facilities review committee shall permit an  
67 expansion for:

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

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

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



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

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

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

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

104 9. Any existing licensed and operating health care facility  
105 offering long-term care services may replace one-half of its licensed  
106 beds at the same site or a site not more than thirty miles from its  
107 current location if, for at least the most recent four consecutive  
108 calendar quarters, the facility operates only fifty percent of its then  
109 licensed capacity with every resident residing in a private room. In  
110 such case:

111 (1) The facility shall report to the division of aging vacant  
112 beds as unavailable for occupancy for at least the most recent four  
113 consecutive calendar quarters;

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

116 (3) The existing facility and proposed facility shall have the  
117 same owner or owners, regardless of corporate or business  
118 structure, and such owner or owners shall stipulate in writing that

119 the existing facility beds to be replaced will not later be used to  
120 provide long-term care services. If the facility is being operated  
121 under a lease, both the lessee and the owner of the existing facility  
122 shall stipulate the same in writing.

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

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

2 [197.325. Any person who proposes to develop or offer a  
new institutional health service shall submit a letter of intent to

3 the committee at least thirty days prior to the filing of the  
4 application.]

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

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

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

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

5 2. Any person who violates the provisions of subsection 1 of  
6 this section shall be liable to the state for civil penalties of one

7 hundred dollars for every day of such violation. Each nonMedicaid  
8 patient placed in a Medicaid bed shall constitute a separate  
9 violation.

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

[197.330. 1. The committee shall:

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

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

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

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

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

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

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

26 (8) Establish by regulation procedures to review, or grant

27 a waiver from review, nonsubstantive projects.  
28 The term "filed" or "filing" as used in this section shall mean  
29 delivery to the staff of the health facilities review committee the  
30 document or documents the applicant believes constitute an  
31 application.

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

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

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

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

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

2 [197.357. For the purposes of reimbursement under section  
3 208.152, RSMo, project costs for new institutional health services  
4 in excess of ten percent of the initial project estimate whether or  
5 not approval was obtained under subsection 7 of section 197.315  
shall not be eligible for reimbursement for the first three years that

6 a facility receives payment for services provided under section  
7 208.152, RSMo. The initial estimate shall be that amount for  
8 which the original certificate of need was obtained or, in the case  
9 of facilities for which a binding construction or purchase contract  
10 was executed prior to October 1, 1980, the amount of that  
11 contract. Reimbursement for these excess costs after the first three  
12 years shall not be made until a certificate of need has been granted  
13 for the excess project costs. The provisions of this section shall  
14 apply only to facilities which file an application for a certificate of  
15 need or make application for cost-override review of their original  
16 application or waiver after August 13, 1982.]

[197.366. The provisions of subdivision (8) of section  
2 197.305 to the contrary notwithstanding, after December 31, 2001,  
3 the term "health care facilities" in sections 197.300 to 197.366 shall  
4 mean:

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

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

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