

FIRST REGULAR SESSION

SENATE BILL NO. 387

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1584S.02I

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.326, 197.327, 197.330, 197.366, and 197.367, RSMo, and to enact in lieu thereof fourteen new sections relating to long-term care certificates of need, with existing penalty provisions.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.326, 197.327, 197.330, 197.366, and 197.367, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.323, 197.326, 197.327, 197.330, and 197.367, to read as follows:

197.300. Sections 197.300 to [197.366] **197.367** shall be known as the "Missouri Certificate of Need Law".

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 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;

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

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

16 (5) **"Committee", the Missouri health facilities review committee;**

17 (6) **"Department", the department of health and senior services;**

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

21 [(6)] (8) **"Ex parte communication", any communication outside**
22 **of a pending application process with a committee member or any**
23 **person employed as staff to the committee or agency regarding any**
24 **matter or issue within the jurisdiction of the committee;**

25 (9) "Expenditure minimum" shall mean:

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

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

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

41 [(7)] (10) **"Health care facilities" shall mean:**

42 (a) **Facilities licensed under chapter 198;**

43 (b) **Long-term care beds in a hospital as described in subdivision**
44 **(3) of subsection 1 of section 198.012;**

45 (c) **Long-term care hospitals or beds in a long-term care hospital**
46 **meeting the requirements described in 42 CFR 412.23(e); and**

47 (d) **Construction of a new hospital as the term "hospital" is**

48 **defined in section 197.020;**

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

53 **[(8)] (12)** "Major medical equipment", medical equipment used for the
54 provision of medical and other health services;

55 **[(9)] (13)** "New institutional health service":

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

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

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

63 (d) Predevelopment activities as defined in subdivision **[(12)] (16)** hereof
64 costing in excess of one hundred fifty thousand dollars;

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

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

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

76 **[(10)] (14)** "Nonsubstantive projects", projects which do not involve the
77 addition, replacement, modernization or conversion of beds or the provision of a
78 new health service but which include a capital expenditure which exceeds the
79 expenditure minimum and are due to an act of God or a normal consequence of
80 maintaining health care services, facility or equipment;

81 **[(11)] (15)** "Person", any individual, trust, estate, partnership,
82 corporation, including associations and joint stock companies, state or political
83 subdivision or instrumentality thereof, including a municipal corporation;

84 [(12)] **(16)** "Predevelopment activities", expenditures for architectural
85 designs, plans, working drawings and specifications, and any arrangement or
86 commitment made for financing; but excluding submission of an application for
87 a certificate of need;

88 **(17) "Urban area", an area of the state that shall only include**
89 **areas within the following counties or cities:**

90 **(a) Any city not within a county;**

91 **(b) Any county with a charter form of government and with more**
92 **than nine hundred fifty thousand inhabitants; and**

93 **(c) Any county with a charter form of government and with more**
94 **than six hundred thousand but fewer than seven hundred thousand**
95 **inhabitants.**

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

4 2. The committee shall be composed of[:

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

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

9 (3) **Five] nine** members appointed by the governor with the advice and
10 consent of the senate, not more than [three] **five** of whom shall be from the same
11 political party. **Each member shall demonstrate knowledge and**
12 **experience in the health care industry or health care accounting,**
13 **insurance, financing, and banking. No member of the senate or house**
14 **of representatives shall serve as a member of the committee.**

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

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

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

25 chairman or the governor.

26 6. The committee shall review and approve or disapprove all applications
27 for a certificate of need made under sections 197.300 to [197.366] **197.367**. It
28 shall issue reasonable rules and regulations governing the submission, review
29 and disposition of applications.

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

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

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

197.312. A certificate of need shall not be required for any institution
2 previously owned and operated for or in behalf of a city not within a county which
3 chooses to be licensed as a facility defined under subdivision (22) or (23) of section
4 198.006 for a facility of ninety beds or less that is owned or operated by a
5 not-for-profit corporation which is exempt from federal income tax as an
6 organization described in section 501(c)(3) of the Internal Revenue Code of 1986,
7 which is controlled directly by a religious organization and which has received
8 approval by the department [of health and senior services] of plans for
9 construction of such facility by August 1, 1995, and is licensed by the department
10 [of health and senior services] by July 1, 1996, as a facility defined under
11 subdivision (22) or (23) of section 198.006 or for a facility, serving exclusively
12 mentally ill, homeless persons, of sixteen beds or less that is owned or operated
13 by a not-for-profit corporation which is exempt from federal income tax which is
14 described in section 501(c)(3) of the Internal Revenue Code of 1986, which is
15 controlled directly by a religious organization and which has received approval
16 by the department [of health and senior services] of plans for construction of such
17 facility by May 1, 1996, and is licensed by the department [of health and senior
18 services] by July 1, 1996, as a facility defined under subdivision (22) or (23) of
19 section 198.006 or an assisted living facility located in a city not within a county
20 operated by a not for profit corporation which is exempt from federal income tax
21 which is described in section 501(c)(3) of the Internal Revenue Code of 1986,
22 which is controlled directly by a religious organization and which is licensed for
23 one hundred beds or less on or before August 28, 1997.

197.315. 1. Any person who proposes to develop or offer a new

2 institutional health service within the state must obtain a certificate of need from
3 the committee prior to the time such services are offered.

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

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

14 4. If any person proposes to develop any new institutional health care
15 service without a certificate of need as required by sections 197.300 to [197.366]
16 **197.367**, the committee shall notify the attorney general, and he shall apply for
17 an injunction or other appropriate legal action in any court of this state against
18 that person.

19 5. After October 1, 1980, no agency of state government may appropriate
20 or grant funds to or make payment of any funds to any person or health care
21 facility which has not first obtained every certificate of need required pursuant
22 to sections 197.300 to [197.366] **197.367**.

23 6. A certificate of need shall be issued only for the premises and persons
24 named in the application and is not transferable except by consent of the
25 committee. **No certificate of need shall be issued if the operator of the**
26 **facility is not named in the application. A change in the named**
27 **operator shall not occur without the consent of the committee.**

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

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

35 9. A certificate of need shall be subject to forfeiture for failure to incur a
36 capital expenditure on any approved project within six months after the date of
37 the order. The applicant may request an extension from the committee of not

38 more than six additional months based upon substantial expenditure made,
39 **provided that, in the case of a certificate of need for new or additional**
40 **beds as the term "bed" is defined in section 197.323, such an extension**
41 **shall not be granted for any approved project up to thirty million**
42 **dollars for which no substantial capital expenditure has been incurred**
43 **within three years of the original approval date of the order and for**
44 **any approved project exceeding thirty million dollars for which no**
45 **substantial capital expenditure has been incurred within five years of**
46 **the original approval date of the order.**

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

54 11. In determining whether a certificate of need should be granted, no
55 consideration shall be given to the facilities or equipment of any other health care
56 facility located more than a fifteen-mile radius from the applying facility, **except**
57 **as provided in section 197.323.**

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

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

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

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

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

74 mental health state-operated psychiatric hospitals.

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

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

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

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

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

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

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

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

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

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

6 3. Sections 197.300 to [197.366] **197.367** shall not be construed to apply
7 to litigation pending in state court on or before April 1, 1996, in which the
8 [Missouri health facilities review] committee is a defendant in an action
9 concerning the application of sections 197.300 to [197.366] **197.367** to long-term
10 care hospital beds meeting the requirements described in 42 CFR[, Section]
11 412.23(e).

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

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

15 (a) Submitting a letter of intent to expand to the department [of health
16 and senior services] and the [health facilities review] committee;

17 (b) Certification from the department [of health and senior services] that
18 the facility:

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

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

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

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

31 (e) If no agreement is reached by the selling and purchasing entities, the
32 [health facilities review] committee shall permit an expansion for:

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

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

42 previous six quarters;

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

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

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

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

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

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

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

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

75 (3) The existing facility and proposed facility shall have the same owner
76 or owners, regardless of corporate or business structure, and such owner or
77 owners shall stipulate in writing that the existing facility beds to be replaced will

78 not later be used to provide long-term care services. If the facility is being
79 operated under a lease, both the lessee and the owner of the existing facility shall
80 stipulate the same in writing.

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

197.320. The committee shall have the power to promulgate reasonable
2 rules, regulations, criteria and standards in conformity with this section and
3 chapter 536 to meet the objectives of sections 197.300 to [197.366] **197.367**
4 including the power to establish criteria and standards to review new types of
5 equipment or service. Any rule or portion of a rule, as that term is defined in
6 section 536.010, that is created under the authority delegated in sections 197.300
7 to [197.366] **197.367** shall become effective only if it complies with and is subject
8 to all of the provisions of chapter 536 and, if applicable, section 536.028. All
9 rulemaking authority delegated prior to August 28, 1999, is of no force and effect
10 and repealed. Nothing in this section shall be interpreted to repeal or affect the
11 validity of any rule filed or adopted prior to August 28, 1999, if it fully complied
12 with all applicable provisions of law. This section and chapter 536 are
13 nonseverable and if any of the powers vested with the general assembly pursuant
14 to chapter 536 to review, to delay the effective date or to disapprove and annul
15 a rule are subsequently held unconstitutional, then the grant of rulemaking
16 authority and any rule proposed or adopted after August 28, 1999, shall be
17 invalid and void.

197.323. 1. As used in this section, the term "bed" shall mean a
2 **bed in a facility as defined in section 198.006 or a long-term care**
3 **hospital bed as described in 42 CFR 412.23(e).**

4 **2. In determining whether a certificate of need shall be granted**
5 **for any new or additional licensed beds, the following shall apply:**

6 **(1) No consideration shall be given to any other licensed beds**
7 **located more than a fifteen-mile radius from the applying facility in all**
8 **areas of the state except for urban areas, for which a ten-mile radius**
9 **shall apply;**

10 **(2) The need methodology for long-term care beds in a ten- or**
11 **fifteen-mile service area shall be as follows:**

12 **(a) For intermediate care facilities and skilled nursing facilities,**
13 **fifty-three beds per one thousand population age sixty-five and older**
14 **minus the current number of intermediate care facility or skilled**
15 **nursing facility beds as shown in the Six-Quarter Occupancy of**
16 **Hospital and Nursing Home Licensed and Available Beds, or its**
17 **successor publications;**

18 **(b) For residential care facilities and assisted living facilities,**
19 **twenty-five beds per one thousand population age sixty-five and older**
20 **minus the current number of residential care facility or assisted living**
21 **facility beds as shown in the Six-Quarter Occupancy of Residential**
22 **Care and Assisted Living Facility Licensed and Available Beds, or its**
23 **successor publications; and**

24 **(c) For long-term care hospital beds, one-tenth of a bed per one**
25 **thousand population minus the current number of long-term care**
26 **hospital beds as shown in the Six-Quarter Occupancy of Long-Term**
27 **Care Hospital Facility Licensed and Available Beds, or its successor**
28 **publications.**

29 **3. No consideration shall be given to any application for new or**
30 **additional licensed beds unless the applicant can demonstrate that the**
31 **average occupancy of all facilities in the same category within the**
32 **service area of the project site has been equal to or greater than eighty-**
33 **five percent during the four most recent quarters according to**
34 **occupancy data published by the committee.**

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

11 **2. [A member of the general assembly who also serves as a member of the**
12 **health facilities review committee is prohibited from soliciting or accepting**

13 campaign contributions from any applicant or person speaking for an applicant
14 or any opponent to any application or persons speaking for any opponent while
15 such application is pending before the health facilities review committee.

16 **3.] No person regulated by chapter 197 or 198 or any officer,**
17 **attorney, agent, or employee thereof, shall initiate, participate in, or**
18 **undertake, directly or indirectly, an ex parte communication with a**
19 **committee member or any person employed as staff to the committee**
20 **or agency unless such communication is submitted or confirmed in**
21 **writing and made part of the certificate of need**
22 **application. Communications for the purposes of clarification of facts**
23 **and issues that may arise after an application has been deemed**
24 **complete and initiated by the agency or committee staff shall not be**
25 **prohibited so long as such communications are submitted or confirmed**
26 **in writing and made part of the application.**

27 **3.** Any person regulated by chapter 197 or 198 and any officer, attorney,
28 agent and employee thereof, shall not offer to any committee member or to any
29 person employed as staff to the committee, any office, appointment or position,
30 or any present, gift, entertainment or gratuity of any kind or any campaign
31 contribution while such application is pending before the [health facilities review]
32 committee.

33 **4.** Any person guilty of knowingly violating the provisions of this section
34 shall be punished as follows: For the first offense, such person is guilty of a class
35 B misdemeanor; and for the second and subsequent offenses, such person is guilty
36 of a class E felony.

197.327. 1. If a facility is granted a certificate of need pursuant to
2 sections 197.300 to [197.365] **197.367** based on an application stating a need for
3 additional Medicaid beds, such beds shall be used for Medicaid patients and no
4 other.

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

9 3. The attorney general shall, upon the request of the department, bring
10 an action in a circuit court of competent jurisdiction to recover the civil
11 penalty. The department may bring such an action itself. The civil action may
12 be brought in the circuit court of Cole County or, at the option of the director, in

13 another county which has venue of an action against the person under other
14 provisions of law.

197.330. 1. The committee shall:

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

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

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

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

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

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

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

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

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

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

197.367. Upon application for renewal by any residential care facility or

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

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

3 (1) Facilities licensed under chapter 198;

4 (2) Long-term care beds in a hospital as described in
5 subdivision (3) of subsection 1 of section 198.012;

6 (3) Long-term care hospitals or beds in a long-term care
7 hospital meeting the requirements described in 42 CFR, section
8 412.23(e); and

9 (4) Construction of a new hospital as defined in chapter
10 197.]

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Bill

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