

FIRST REGULAR SESSION

# SENATE BILL NO. 165

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EIGEL.

Pre-filed December 10, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0879S.011

## AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 354.095, RSMo, and to enact in lieu thereof four new sections relating to certificates of need.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 354.095, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.705, 198.530, 208.169, and 354.095, to read as follows:

197.705. All hospitals and health care facilities[, defined in sections 197.020 and 197.305] **licensed under chapters 197 and 198**, 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,] 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 organization" means any organization that offers any health plan certified by the department of health and senior services designed to provide incentives to

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

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.

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 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.

354.095. 1. A corporation subject to the provisions of sections 354.010 to  
2 354.380 may, in the discretion of its board of directors, limit or define the classes  
3 of persons who shall be eligible to become members or beneficiaries, limit and  
4 define the benefits which it will furnish, and may define such benefits as it

5 undertakes to furnish into classes or kinds. It may make available to its  
6 members or beneficiaries such health services, or reimbursement therefor, as the  
7 board of directors of any such corporation may approve; if maternity benefits are  
8 provided to any members of any plan, then maternity benefits shall be provided  
9 to any member of such plan without discrimination as to whether the member is  
10 married or unmarried, and if maternity benefits are provided to a beneficiary of  
11 any plan, then maternity benefits shall be provided to such beneficiary of such  
12 plan without discrimination as to whether the beneficiary is married or  
13 unmarried.

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

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

[197.305. As used in sections 197.300 to 197.366, the  
2 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 and long-term care beds in a  
24 hospital as described in subdivision (3) of subsection 1 of section  
25 198.012, six hundred thousand dollars in the case of capital  
26 expenditures, or four hundred thousand dollars in the case of major  
27 medical equipment, provided, however, that prior to January 1,  
28 2003, the expenditure minimum for beds in such a facility and  
29 long-term care beds in a hospital described in section 198.012 shall  
30 be zero, subject to the provisions of subsection 7 of section 197.318;

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

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

39 (7) "Health service area", a geographic region appropriate  
40 for the effective planning and development of health services,  
41 determined on the basis of factors including population and the  
42 availability of resources, consisting of a population of not less than  
43 five hundred thousand or more than three million;

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

46 (9) "New institutional health service":

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

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

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

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

56 (e) Any change in licensed bed capacity of a health care  
57 facility licensed under chapter 198 which increases the total  
58 number of beds by more than ten or more than ten percent of total  
59 bed capacity, whichever is less, over a two-year period, provided  
60 that any such health care facility seeking a nonapplicability review  
61 for an increase in total beds or total bed capacity in an amount less  
62 than described in this paragraph shall be eligible for such review  
63 only if the facility has had no patient care class I deficiencies  
64 within the last eighteen months and has maintained at least an  
65 eighty-five percent average occupancy rate for the previous six  
66 quarters;

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

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

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

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

86 (12) "Predevelopment activities", expenditures for  
87 architectural designs, plans, working drawings and specifications,

88 and any arrangement or commitment made for financing; but  
89 excluding submission of an application for a certificate of need.]

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

6 2. The committee shall be composed of:

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

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

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

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

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

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

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

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

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

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

2 [197.312. A certificate of need shall not be required for any  
3 institution previously owned and operated for or in behalf of a city  
4 not within a county which chooses to be licensed as a facility  
5 defined under subdivision (22) or (23) of section 198.006 for a  
6 facility of ninety beds or less that is owned or operated by a  
7 not-for-profit corporation which is exempt from federal income tax  
8 as an organization described in section 501(c)(3) of the Internal  
9 Revenue Code of 1986, which is controlled directly by a religious  
10 organization and which has received approval by the department  
11 of health and senior services of plans for construction of such  
12 facility by August 1, 1995, and is licensed by the department of  
13 health and senior services by July 1, 1996, as a facility defined  
14 under subdivision (22) or (23) of section 198.006 or for a facility,  
15 serving exclusively mentally ill, homeless persons, of sixteen beds  
16 or less that is owned or operated by a not-for-profit corporation  
17 which is exempt from federal income tax which is described in  
18 section 501(c)(3) of the Internal Revenue Code of 1986, which is  
19 controlled directly by a religious organization and which has  
20 received approval by the department of health and senior services  
21 of plans for construction of such facility by May 1, 1996, and is  
22 licensed by the department of health and senior services by July 1,  
23 1996, as a facility defined under subdivision (22) or (23) of section  
24 198.006 or an assisted living facility located in a city not within a  
25 county operated by a not for profit corporation which is exempt  
26 from federal income tax which is described in section 501(c)(3) of  
27 the Internal Revenue Code of 1986, which is controlled directly by  
28 a religious organization and which is licensed for one hundred beds  
or less on or before August 28, 1997.]

2 [197.315. 1. Any person who proposes to develop or offer a  
3 new institutional health service within the state must obtain a  
4 certificate of need from the committee prior to the time such  
5 services are offered.

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. The provisions of this subsection shall not apply to  
74 hospitals operated by the state and licensed under this chapter,  
75 except for department of mental health state-operated psychiatric  
76 hospitals.

77 17. Notwithstanding other provisions of this section, a

78 certificate of need may be issued after July 1, 1983, for an  
79 intermediate care facility operated exclusively for the intellectually  
80 disabled.

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

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

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

[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, which are designed and operated exclusively for the care and  
5 treatment of persons with acquired human immunodeficiency  
6 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.]

[197.318. 1. As used in this section, the term "licensed and

2 available" means beds which are actually in place and for which a  
3 license has been issued.

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

8 3. Sections 197.300 to 197.366 shall not be construed to  
9 apply to litigation pending in state court on or before April 1, 1996,  
10 in which the Missouri health facilities review committee is a  
11 defendant in an action concerning the application of sections  
12 197.300 to 197.366 to long-term care hospital beds meeting the  
13 requirements described in 42 CFR, Section 412.23(e).

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

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

18 (a) Submitting a letter of intent to expand to the  
19 department of health and senior services and the health facilities  
20 review committee;

21 (b) Certification from the department of health and senior  
22 services that the facility:

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

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

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

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

37 (e) If no agreement is reached by the selling and purchasing

38 entities, the health facilities review committee shall permit an  
39 expansion for:

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

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

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

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

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

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

69 (5) A facility licensed pursuant to chapter 198 may transfer  
70 or sell individual long-term care licensed beds to facilities  
71 qualifying pursuant to paragraphs (a) and (b) of subdivision (1) of  
72 this subsection. Any facility which transfers or sells licensed beds  
73 shall not expand its licensed bed capacity in that licensure category

74 for a period of five years from the date the licensure is  
75 relinquished.

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

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

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

88 (3) The existing facility and proposed facility shall have the  
89 same owner or owners, regardless of corporate or business  
90 structure, and such owner or owners shall stipulate in writing that  
91 the existing facility beds to be replaced will not later be used to  
92 provide long-term care services. If the facility is being operated  
93 under a lease, both the lessee and the owner of the existing facility  
94 shall stipulate the same in writing.

95 6. Nothing in this section shall prohibit a health care  
96 facility licensed pursuant to chapter 198 from being replaced in its  
97 entirety within fifteen miles of its existing site so long as the  
98 existing facility and proposed or replacement facility have the same  
99 owner or owners regardless of corporate or business structure and  
100 the health care facility being replaced remains unlicensed and  
101 unused for any long-term care services whether they do or do not  
102 require a license from the date of licensure of the replacement  
103 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 to meet the objectives  
5 of sections 197.300 to 197.366 including the power to establish  
6 criteria and standards to review new types of equipment or  
service. Any rule or portion of a rule, as that term is defined in

7 section 536.010, that is created under the authority delegated in  
8 sections 197.300 to 197.366 shall become effective only if it  
9 complies with and is subject to all of the provisions of chapter 536  
10 and, if applicable, section 536.028. All rulemaking authority  
11 delegated prior to August 28, 1999, is of no force and effect and  
12 repealed. Nothing in this section shall be interpreted to repeal or  
13 affect the validity of any rule filed or adopted prior to August 28,  
14 1999, if it fully complied with all applicable provisions of law. This  
15 section and chapter 536 are nonseverable and if any of the powers  
16 vested with the general assembly pursuant to chapter 536 to  
17 review, to delay the effective date or to disapprove and annul a rule  
18 are subsequently held unconstitutional, then the grant of  
19 rulemaking authority and any rule proposed or adopted after  
20 August 28, 1999, shall be invalid and void.]

[197.325. Any person who proposes to develop or offer a  
2 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 or  
2 her 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 and shall also register with  
5 the staff of the health facilities review committee for every project  
6 in which such person has an interest and indicate whether such  
7 person supports or opposes the named project. The registration  
8 shall also include the names and addresses of any person, firm,  
9 corporation or association that the person registering represents in  
10 relation to the named project. Any person violating the provisions  
11 of this subsection shall be subject to the penalties specified in  
12 section 105.478.

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 and any  
20 officer, attorney, agent and employee thereof, shall not offer to any  
21 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 E 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  
beds by ten percent or more, or the change in licensure category for

5 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, project costs for new institutional health services in excess  
4 of ten percent of the initial project estimate whether or not  
5 approval was obtained under subsection 7 of section 197.315 shall  
6 not be eligible for reimbursement for the first three years that a  
7 facility receives payment for services provided under section  
8 208.152. The initial estimate shall be that amount for which the  
9 original certificate of need was obtained or, in the case of facilities  
10 for which a binding construction or purchase contract was executed  
11 prior to October 1, 1980, the amount of that  
12 contract. Reimbursement for these excess costs after the first three  
13 years shall not be made until a certificate of need has been granted  
14 for the excess project costs. The provisions of this section shall  
15 apply only to facilities which file an application for a certificate of  
16 need or make application for cost-overrun review of their original  
application or waiver after August 13, 1982.]

2 [197.366. The term "health care facilities" in sections  
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.]

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

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