

FIRST REGULAR SESSION

# SENATE BILL NO. 82

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0719S.011

## AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.366, 197.367, and 208.225, RSMo, and to enact in lieu thereof seventeen new sections relating to health care facilities, 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, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.366, 197.367, and 208.225, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 197.300, 197.305, 197.310, 197.312, 197.315, 197.316, 197.318, 197.320, 197.323, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.367, and 208.225, 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)] **(3)** "Certificate of need", a written certificate issued by the  
13 [committee] **department** setting forth the [committee's] **department's**  
14 affirmative finding that a proposed project sufficiently satisfies the criteria  
15 prescribed for such projects by sections 197.300 to [197.366] **197.367**;

16            **(4) "Department", the department of health and senior services;**

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

20            (6) "Expenditure minimum" shall mean:

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

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

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

36            (7) **"Health care facilities" shall mean:**

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

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

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

42            **(d) Construction of a new hospital as the term "hospital" is**  
43 **defined in section 197.020;**

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

48 [(8) "Major medical equipment", medical equipment used for the provision  
49 of medical and other health services;]

50 (9) "New institutional health service":

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

53 (b) The acquisition, including acquisition by lease, of any health care  
54 facility[, or major medical equipment costing] in excess of the expenditure  
55 minimum;

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

58 (d) Predevelopment activities as defined in [subdivision (12)] **this**  
59 **section**, hereof costing in excess of one hundred fifty thousand dollars;

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

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

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

77 (10) "Nonsubstantive projects", projects which do not involve the addition,  
78 replacement, modernization or conversion of beds or the provision of a new health  
79 service but which include a capital expenditure which exceeds the expenditure  
80 minimum and 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, corporation,  
83 including associations and joint stock companies, state or political subdivision or

84 instrumentality thereof, including a municipal corporation;

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

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

91 (a) Any city not within a county;

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

94 (c) Any county with a charter form of government and with more  
95 than six hundred thousand but fewer than seven hundred thousand  
96 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 members appointed by the governor with the advice and consent  
10 of the senate, not more than three of whom shall be from the same political party.

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

13 4. The members shall be appointed as soon as possible after September  
14 28, 1979. One of the senate members, one of the house members and three of the  
15 members appointed by the governor shall serve until January 1, 1981, and the  
16 remaining members shall serve until January 1, 1982. All subsequent members  
17 shall be appointed in the manner provided in subsection 2 of this section and  
18 shall serve terms of two years.

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

22 6.] The [committee] **department** shall review and approve or disapprove  
23 all applications for a certificate of need made under sections 197.300 to [197.366]

24 **197.367.** It shall issue reasonable rules and regulations governing the  
25 submission, review and disposition of applications.

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

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

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] **department** prior to the time such services are offered.

4 2. Only those new institutional health services which are found by the  
5 [committee] **department** to be needed shall be granted a certificate of  
6 need. Only those new institutional health services which are granted certificates

7 of need shall be offered or developed within the state. No expenditures for new  
8 institutional health services in excess of the applicable expenditure minimum  
9 shall be made 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] **department** shall notify the attorney general, and he  
17 **or she** shall apply for an injunction or other appropriate legal action in any court  
18 of this state against 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] **department**.

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

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

34 9. A certificate of need shall be subject to forfeiture for failure to incur a  
35 capital expenditure on any approved project within six months after the date of  
36 the order. The applicant may request an extension from the [committee]  
37 **department** of not more than six additional months based upon substantial  
38 expenditure made; **provided, that such an extension shall not be granted**  
39 **for any approved project for which no substantial capital expenditure**  
40 **has been incurred within three years of the original approval date of**  
41 **the order. Any applicant whose request for an extension is not granted**  
42 **under this subsection shall be permitted to apply for a new certificate**

43 **of need.**

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

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

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

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

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

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

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

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

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

78           (1) Research equipment that is to be used in a clinical trial that has

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

85 (2) Equipment that is to be used by an academic health center operated  
86 by the state in furtherance of its research or teaching missions] **any major**  
87 **medical equipment used for the provision of medical or other health**  
88 **services.**

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

7 3. Sections 197.300 to [197.366] **197.367** shall not be construed to apply  
8 to litigation pending in state court on or before April 1, 1996, in which the  
9 Missouri health facilities review committee is a defendant in an action concerning  
10 the application of sections 197.300 to [197.366] **197.367** to long-term care  
11 hospital beds meeting the requirements described in 42 CFR[, Section] 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] **department** shall issue a certificate of need
- 30 for the expansion of the purchaser facility upon surrender of the seller's license;
- 31 or
- 32 (e) If no agreement is reached by the selling and purchasing entities, the
- 33 [health facilities review committee] **department** shall permit an expansion for:
- 34 a. A facility with more than forty beds may expand its licensed bed
- 35 capacity within the same licensure category by twenty-five percent or thirty beds,
- 36 whichever is greater, if that same licensure category in such facility has
- 37 experienced an average occupancy of ninety-three percent or greater over the
- 38 previous six quarters;
- 39 b. A facility with fewer than forty beds may expand its licensed bed
- 40 capacity within the same licensure category by twenty-five percent or ten beds,
- 41 whichever is greater, if that same licensure category in such facility has
- 42 experienced an average occupancy of ninety-two percent or greater over the
- 43 previous six quarters;
- 44 c. A facility adding beds pursuant to subparagraphs a. or b. of this
- 45 paragraph shall not expand by more than fifty percent of its then licensed bed
- 46 capacity in the qualifying licensure category;
- 47 (2) Any beds sold shall, for five years from the date of relicensure by the

48 purchaser, remain unlicensed and unused for any long-term care service in the  
49 selling facility, whether they do or do not require a license;

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

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

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

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

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

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

76 (3) The existing facility and proposed facility shall have the same owner  
77 or owners, regardless of corporate or business structure, and such owner or  
78 owners shall stipulate in writing that the existing facility beds to be replaced will  
79 not later be used to provide long-term care services. If the facility is being  
80 operated under a lease, both the lessee and the owner of the existing facility shall  
81 stipulate the same in writing.

82 6. Nothing in this section shall prohibit a health care facility licensed  
83 pursuant to chapter 198 from being replaced in its entirety within fifteen miles

84 of its existing site so long as the existing facility and proposed or replacement  
85 facility have the same owner or owners regardless of corporate or business  
86 structure and the health care facility being replaced remains unlicensed and  
87 unused for any long-term care services whether they do or do not require a license  
88 from the date of licensure of the replacement facility.

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

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

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] **department** shall register as a lobbyist pursuant to  
4 chapter 105 and shall also register with the staff of the [health facilities review  
5 committee] **department** for every project in which such person has an interest  
6 and indicate whether such person supports or opposes the named project. The  
7 registration shall also include the names and addresses of any person, firm,  
8 corporation or association that the person registering represents in relation to the  
9 named project. Any person violating the provisions of this subsection shall be  
10 subject to the penalties 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.] Any person regulated by chapter 197 or 198 and any officer, attorney,  
17 agent and employee thereof, shall not offer to any [committee member or to any]  
18 person employed as staff to the [committee] **department**, any office,  
19 appointment or position, or any present, gift, entertainment or gratuity of any  
20 kind or any campaign contribution while such application is pending before the  
21 [health facilities review committee] **department**.

22 3. Any person guilty of knowingly violating the provisions of this section  
23 shall be punished as follows: For the first offense, such person is guilty of a class  
24 B misdemeanor; and for the second and subsequent offenses, such person is guilty  
25 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] **department** 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]  
14 **department** may grant an extension of not more than thirty days on its own  
15 initiative or upon the 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] **department** the document or  
28 documents the 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.]

197.335. Within thirty days of the decision of the [committee]  
2 **department**, the applicant, **or any affected person who is a provider of**  
3 **the same services as those offered by the applicant**, may file an appeal to  
4 be heard de novo by the administrative hearing commissioner, the circuit court  
5 of Cole County or the circuit court in the county within which such health care  
6 service or facility is proposed to be developed.

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

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.

208.225. 1. To implement fully the provisions of section 208.152, the MO  
2 HealthNet division shall calculate the Medicaid per diem reimbursement rates  
3 of each nursing home participating in the Medicaid program as a provider of  
4 nursing home services based on its costs reported in the Title XIX cost report  
5 filed with the MO HealthNet division for its fiscal year as provided in subsection  
6 2 of this section.

7 2. The recalculation of Medicaid rates to all Missouri facilities will be  
8 performed as follows: effective July 1, 2004, the department of social services  
9 shall use the Medicaid cost report containing adjusted costs for the facility fiscal  
10 year ending in 2001 and redetermine the allowable per-patient day costs for each  
11 facility. The department shall recalculate the class ceilings in the patient care,  
12 one hundred twenty percent of the median; ancillary, one hundred twenty percent  
13 of the median; and administration, one hundred ten percent of the median cost  
14 centers. Each facility shall receive as a rate increase one-third of the amount  
15 that is unpaid based on the recalculated cost determination.

16 **3. Any intermediate care facility or skilled nursing facility, as**  
17 **such terms are defined in section 198.006, participating in MO**  
18 **HealthNet that incurs total capital expenditures, as such term is**  
19 **defined in section 197.305, in excess of two thousand dollars per bed**  
20 **shall be entitled to obtain from the MO HealthNet division a**  
21 **recalculation of its Medicaid per diem reimbursement rate based on its**  
22 **additional capital costs or all costs incurred during the facility fiscal**  
23 **year during which such capital expenditures were made. Such**  
24 **recalculated reimbursement rate shall become effective and payable**  
25 **when granted by the MO HealthNet division as of the date of**  
26 **application for a rate adjustment.**

[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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