

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR

SENATE BILL NO. 326
90TH GENERAL ASSEMBLY
1999

S1585.06T

AN ACT

To repeal sections 197.310, 197.315, 197.325, 197.330, 197.335, 197.350, 197.360, 197.365, 198.015, 198.070 and 198.073, RSMo 1994, and sections 197.305, 197.313, 197.316, 197.317, 197.318, 197.320, 198.067 and 198.439, RSMo Supp. 1998, relating to nursing home reimbursement and regulation, and to enact in lieu thereof thirty new sections relating to the same subject, with an emergency clause for certain sections, expiration dates for certain sections and penalty provisions.

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

Section A. Sections 197.310, 197.315, 197.325, 197.330, 197.335, 197.350, 197.360, 197.365, 198.015, 198.070 and 198.073, RSMo 1994, and sections 197.305, 197.313, 197.316, 197.317, 197.318, 197.320, 198.067 and 198.439, RSMo Supp. 1998, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 197.305, 197.310, 197.315, 197.316, 197.317, 197.318, 197.320, 197.325, 197.330, 197.335, 198.015, 198.067, 198.070, 198.073, 198.439, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, to read as follows:

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

- (1) "Affected persons", the person proposing the development of a new **institutional** health **[care]** service, the public to be served, **[the health systems agency]** and health care facilities within the service area in which the proposed new health care service is to be developed;
- (2) "Agency", the **[state health planning and development agency]** **certificate of need program** of the Missouri department of health;
- (3) "Capital expenditure", an expenditure by or on behalf of a health care facility which,

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

under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

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

(5) ["Continuing care retirement community", a continuing care retirement community provides at the same site or location independent housing, long-term health care and other services to older persons not related by blood or marriage to the owner or operator of the continuing care retirement community under an agreement effective for the life of the person or a specified period of time in excess of one year which guarantees or provides priority access to on-site health-related long-term care services when needed;

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

[(7)] (6) "Expenditure minimum" shall mean:

(a) For beds in existing or proposed health care facilities licensed pursuant to chapter 198, RSMo, and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo, six hundred thousand dollars in the case of capital expenditures, or four hundred thousand dollars in the case of major medical equipment, provided, however, that prior to **[December 31, 1999]** **January 1, 2003**, the expenditure minimum for beds in such a facility and long-term care beds in a hospital described in section 198.012, RSMo, shall be zero, subject to the provisions of subsection 7 of section 197.318;

(b) For beds or equipment in a long-term care hospital meeting the requirements described in 42 C.F.R., Section 412.23(e), the expenditure minimum shall be zero; and

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

[(8)] (7) "Health care facilities", hospitals, health maintenance organizations, tuberculosis hospitals, psychiatric hospitals, intermediate care facilities, skilled nursing facilities, residential care facilities I and II, kidney disease treatment centers, including freestanding hemodialysis units, diagnostic imaging centers, radiation therapy centers and ambulatory surgical facilities, but excluding the private offices of physicians, dentists and other practitioners of the healing arts, and Christian Science sanatoriums, also known as Christian Science Nursing facilities listed and certified by the Commission for Accreditation of Christian Science Nursing Organization/Facilities, Inc., and facilities of not for profit corporations in existence on October 1, 1980, subject either to the provisions and regulations of Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-538, and any

residential care facility I or residential care facility II operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue Code, as amended, which does not require the expenditure of public funds for purchase or operation, with a total licensed bed capacity of one hundred beds or fewer;

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

[(10)] (9) "Health systems agency", a regional health planning agency established pursuant to P.L. 93-641 and, after December 31, 1981, in accordance with Section 1512(b)(1)(B) thereof;

[(11)] (9) "Major medical equipment", medical equipment used for the provision of medical and other health services;

[(12)] (10) "New institutional health service":

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

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

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

(d) Predevelopment activities as defined in subdivision **[(15)] (13)** hereof costing in excess of one hundred fifty thousand dollars;

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

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

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

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

[(14)] (12) "Person", any individual, trust, estate, partnership, corporation, including associations and joint stock companies, state or political subdivision or instrumentality thereof,

including a municipal corporation;

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

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

2. The committee shall be composed of:

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

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

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

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

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

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

6. The committee shall review and approve or disapprove all applications for a certificate of need made under sections 197.300 to **[197.365] 197.366**. It shall issue reasonable rules and regulations governing the submission, review and disposition of applications.

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

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

[197.313. A continuing care retirement community, skilled nursing facility or residential care facility I or II may increase its licensed bed capacity by the lesser of ten beds or ten percent only once during the two-year period beginning on July 12, 1996, and ending on July 11, 1998. A facility's increase in beds pursuant to this section shall only be within the same licensure category. Any health care facility which has received a nonapplicability certificate of need letter by July 11, 1998, shall be allowed until December 31, 1998, to complete and license the beds allowed by this exception.]

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

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

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

4. If any person proposes to develop any new institutional health care service without a certificate of need as required by sections 197.300 to [197.365] **197.366**, the committee shall notify the attorney general, and he shall apply for an injunction or other appropriate legal action in any court of this state against that person.

5. After October 1, 1980, no agency of state government may appropriate or grant funds to or make payment of any funds to any person or health care facility which has not first obtained every certificate of need required [under] **pursuant to** sections 197.300 to [197.365] **197.366**.

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

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

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

9. A certificate of need shall be subject to forfeiture for failure to incur a capital expenditure on any approved project within six months after the date of the order. The applicant may request an extension from the committee of not more than six additional months based upon substantial expenditure made.

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

11. In determining whether a certificate of need should be granted, no consideration shall

be given to the facilities or equipment of any other health care facility located more than a fifteen-mile radius from the applying facility.

12. When a nursing facility shifts from a [professional] **skilled** to a [practical] **intermediate** level of nursing care, it may return to the higher level of care if it meets the licensure requirements, without obtaining a certificate of need.

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

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

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

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

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

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

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

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

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

4. The attorney general shall, upon request of the department of health, bring an action in a circuit court of competent jurisdiction for violation of this section [and section 197.312].

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

(1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;

(2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 C.F.R., section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision [(12)] **(10)** of section 197.305; nor

(3) The reallocation of intermediate care facility or skilled nursing facility beds of existing licensed beds by transfer or sale of licensed beds between a hospital licensed [under] **pursuant to** this chapter or a nursing care facility licensed [under] **pursuant to** chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds. However, after [July 1, 1999] **January 1, 2003**, nothing in this section shall prohibit the Missouri health facilities review committee from issuing a certificate of need for additional beds in existing health care facilities or for new beds in new health care facilities or for the reallocation of licensed beds, provided that no construction shall begin prior to [July 1, 2000] **January 1, 2004**. The provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of this section.

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

197.318. 1. The provisions of section 197.317 shall not apply to a residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility only where the department of social services has first determined that there presently exists a need for additional beds of that classification because the average occupancy of all licensed and available residential care facility I, residential care facility II, intermediate care facility and skilled nursing facility beds exceeds ninety percent for at least [three] **four** consecutive calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise appears to qualify for a certificate of need. The department's certification that there is no need for additional beds shall serve as the final determination and decision of the committee. In determining ninety percent occupancy, residential care facility I and II shall be one separate classification and intermediate care and skilled nursing facilities are another separate classification. [The provisions of sections 197.300 to 197.366 shall not apply to any of the following:

(1) A residential care facility I or residential care facility II which has received approval

by the division of aging of plans for construction of such facility by August 1, 1995, and is licensed by the division of aging by August 1, 1996;

(2) A combined skilled nursing facility and residential care facility I and II located in a tax increment financing district which has received approval by the division of aging of plans for construction of the residential care facility I and II beds by August 1, 1995;

(3) A residential care facility I or residential care facility II which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is located in any county of the first classification without a charter form of government with an assessed valuation of at least one billion dollars but not more than one billion five hundred million dollars;

(4) A residential care facility I or residential care facility II which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is located in a nursing home district which is contiguous to a public hospital district located in a county of the third classification.]

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

3. There shall be no expenditure minimum for facilities, beds, or services referred to in subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire [December 31, 1999] **January 1, 2003**.

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

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

6. The committee shall review all letters of intent and applications for long-term care hospital beds meeting the requirements described in 42 C.F.R., section 412.23(e) under its criteria and standards for long-term care beds.

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

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

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

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

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

- a. Has no patient care class I deficiencies within the last eighteen months; and
- b. Has maintained a ninety percent average occupancy rate for the previous six quarters;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197.320. The committee shall have the power to promulgate reasonable rules, regulations, criteria and standards in conformity with this section and chapter 536, RSMo, to meet the objectives of sections 197.300 to [197.365] **197.366** including the power to establish criteria and standards to review new types of equipment or service. [No rule or portion of a rule promulgated under the authority of sections 197.300 to 197.365 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 197.300 to 197.366 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of**

rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

197.325. [1.] Any person who proposes to develop or offer a new institutional health service shall submit a letter of intent to [the appropriate health systems agency and] the committee at least thirty days prior to the filing of the application.

[2. Applicants for a certificate of need shall simultaneously submit their request to the health systems agency serving the area in which the new institutional health service is to be developed and the committee.]

197.330. 1. The committee shall:

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

(2) Provide written notification to affected persons [and contiguous health systems agencies] located within this state at the beginning of a review. This notification may be given through publication of the review schedule in all newspapers of general circulation in the area to be served;

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

(4) [Consider recommendations submitted by the appropriate health systems agency, provided such recommendations are documented and based on published criteria, plans and standards adopted by the health systems agency;

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

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

[(7)] (6) Consider the needs and circumstances of institutions providing training programs for health personnel;

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

[(9)] (8) Establish by regulation procedures to review, or grant a waiver from review, nonsubstantive projects.

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

2. Failure by the committee to issue a written decision on an application for a certificate

of need within the time required by this section shall constitute approval of and final administrative action on the application, and is subject to appeal [under] **pursuant to** section 197.335 only on the question of approval by operation of law.

197.335. Within thirty days of the decision of the committee, the applicant [or the health systems agency within whose area the new institutional health service is to be offered] may file an appeal [in accordance with the provisions of sections 621.015 to 621.198, RSMo, and chapter 536, RSMo, provided, that venue of any appeal from the administrative hearing commission to] **to be heard de novo by the administrative hearing commissioner, the circuit court of Cole County or** the circuit court [shall be] in the county within which such health care service or facility is proposed to be developed.

[197.350. No member or employee of a health system agency may use any state, federal or local funds for lobbying activities with the Missouri general assembly. Violation of this section shall be a class A misdemeanor.]

[197.360. No provisions of sections 197.300 to 197.365 shall apply to gifts and grants, for facilities and equipment that do not require the expenditure of public funds for purchase or operation.]

[197.365. 1. Each health systems agency shall have a governing board for health planning and development activities.

2. Except as provided in this section, each health systems agency shall have the power to establish its own bylaws, apportion board members to the various subareas within the health systems agency, and establish the length of terms of board members.

3. The selection of members of the board to fill any vacancies occurring prior to December 31, 1981, for each health systems agency shall be made within each subarea by a caucus of the county commissioners or their counterparts and the mayors of that subarea. Each subarea caucus shall conform to the provisions of 1512(b)(3)(C) in the selection of board members.]

198.015. 1. No person shall establish, conduct or maintain a residential care facility I, residential care facility II, intermediate care facility, or skilled nursing facility in this state without a valid license issued by the department. Any person violating this subsection is guilty of a class A misdemeanor.

2. Each license shall be issued only for the premises and persons named in the application. A license, unless sooner revoked, shall be issued for a period of up to two years, in order to coordinate licensure with certification in accordance with section 198.045.

3. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, **the current operator shall notify the department**

of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

- (1) With respect to a partnership, a change in the majority interest of general partners;
- (2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;
- (3) With respect to a corporation, a change in the persons who own, hold or have the power to vote the majority of any class of securities issued by the corporation.

4. Licenses shall be posted in a conspicuous place on the licensed premises.
5. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.
6. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.
7. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.
8. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

198.067. 1. An action may be brought by the department, or by the attorney general on his **or her** own volition or at the request of the department or any other appropriate state agency, to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096, to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action brought [under] **pursuant to** the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought [under] **pursuant to** the provisions of this section no less than fifteen days after the filing of the action.

2. The department may bring an action in circuit court to recover a civil penalty against the licensed operator of the facility as provided by this section. Such action shall be brought in the circuit court for the county in which the facility is located. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

3. The operator of any facility which has been cited with a violation of sections 198.003 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of section 1396r of Title 42 of the United States Code or the regulations established pursuant thereto, is

liable to the state for civil penalties of up to ten thousand dollars for each day that the violations existed or continues to exist. Violations shall be presumed to continue to exist from the time they are found until the time the division of aging finds them to have been corrected. The amount of the penalty shall be determined as follows:

- (1) For each violation of a class I standard, not less than one hundred fifty dollars nor more than one thousand dollars;
- (2) For each violation of a class II standard, not less than fifty dollars nor more than five hundred dollars;
- (3) For each violation of a class III standard, not less than fifteen dollars nor more than one hundred fifty dollars;
- (4) For each violation of a federal standard which does not also constitute a violation of a state law or regulation, not less than two hundred fifty dollars nor more than five hundred dollars;
- (5) For each specific class I violation by the same operator which has been cited within the past twenty-four months and for each specific class II or III violation by the same operator which has been cited within the past twelve months, double the amount last imposed.

As used in this subdivision the term "violation" shall mean a breach of a specific state or federal standard or statute which remains uncorrected and not in accord with the accepted plan of correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026 or the regulations established pursuant to Title 42 of the United States Code. A judgment rendered against the operator of a facility pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

4. Any individual who willfully and knowingly certifies **[under] pursuant to** subsection (b)(3)(B)(i) of section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than one thousand dollars with respect to each assessment. Any individual who willfully and knowingly causes another individual to certify **[under] pursuant to** subsection (b)(3)(B)(i) of section 1396r of Title 42 of the United States Code a material and false statement in a resident assessment is subject to a civil penalty of not more than five thousand dollars with respect to each assessment.

5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not bar the imposition of any other remedy.

6. Penalties collected pursuant to this section shall be deposited in the division of aging elderly home delivered meals trust fund as established in section 660.078, RSMo. **Such penalties shall not be considered a charitable contribution for tax purposes.**

7. To recover any civil penalty, the moving party shall prove by clear and convincing evidence that the violation occurred.

8. The licensed operator of a facility against whom an action to recover civil penalty is

brought pursuant to this section may confess judgment as provided in section 511.070, RSMo, at any time prior to hearing. If [said] **such** licensed operator agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

9. The amount of any civil penalty assessed by the circuit court pursuant to this section shall be reduced by the amount of any civil monetary penalty which the licensed operator of the facility may establish it has paid pursuant to the laws of the United States for the breach of the same federal standards for which the state action is brought.

10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this section, any facility which is cited with a violation of a class I standard pursuant to subsection 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds licensed to the facility, up to a maximum of ten thousand dollars pursuant to subsections 1 and 2 of this section. The liability of the facility for civil penalties [under] **pursuant to** this section shall be incurred immediately upon the citation of the violation and shall not be affected by any subsequent correction of the violation. For the purposes of this section, "serious physical injury" means physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, facility administrator, employee in a facility, or employee of the department of social services or of the department of mental health, coroner, dentist, hospital and clinic personnel engaged in examination, other health practitioners, mental health professional, adult day care worker, probation or parole officer, law enforcement official or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he **or she** shall immediately report or cause a report to be made to the department.

2. The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any person required in subsection 1 of this section to report or cause a report to be made to the department who knowingly fails to make a report within a reasonable time after the act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

4. In addition to those persons required to report [under] **pursuant to** subsection 1 of this section, any other person having reasonable cause to believe that a resident has been abused or

neglected may report such information to the department.

5. Upon receipt of a report, the department shall initiate an investigation within twenty-four hours and, as soon as possible during the course of the investigation, shall notify the resident's next of kin or responsible party of the report and the investigation and further notify them whether the report was substantiated or unsubstantiated. **As provided in section 565.186, RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the appropriate law enforcement agency and prosecutor.**

6. If the investigation indicates possible abuse or neglect of a resident, the investigator shall refer the complaint together with [his] **the investigator's** report to the department director or [his] **the director's** designee for appropriate action. If, during the investigation or at its completion, the department has reasonable cause to believe that immediate removal is necessary to protect the resident from abuse or neglect, the department or the local prosecuting attorney may, or the attorney general upon request of the department shall, file a petition for temporary care and protection of the resident in a circuit court of competent jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the department authority for the temporary care and protection of the resident, for a period not to exceed thirty days.

7. Reports shall be confidential, as provided [under] **pursuant to** section 660.320, RSMo.

8. Anyone who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted in bad faith or with malicious purpose. **It is a crime pursuant to section 565.188, RSMo, for any person to purposely file a false report of elder abuse or neglect.**

9. Within five working days after a report required to be made [under] **pursuant to** this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

10. No person who directs or exercises any authority in a facility shall evict, harass, dismiss or retaliate against a resident or employee because [he] **such resident or employee** or any member of [his] **such resident's or employee's** family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the facility which [he] **the resident, the resident's family or an employee** has reasonable cause to believe has been committed or has occurred. **Through the existing division of aging information and referral telephone contact line, residents, their families and employees of a facility shall be able to obtain information about their rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to a report being made pursuant to this section.**

11. Any person who knowingly abuses or neglects a resident of a facility shall be guilty of

a class D felony.

12. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who have been finally determined by the department pursuant to section 660.315, RSMo, to have recklessly, knowingly or purposely abused or neglected a resident while employed in any facility.

13. The timely self-reporting of incidents to the central registry by a facility shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hotline call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

198.073. 1. **Except as provided in subsection 3 of this section**, a residential care facility II or residential care facility I shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.

2. **Notwithstanding the provisions of subsection 3 of this section**, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed forty-five days, may be allowed to remain in a residential care facility II or residential care facility I if approved by a physician.

3. A residential care facility II may admit or continue to care for those persons who are physically capable of negotiating a normal path to safety using assistive devices or aids when necessary but are mentally incapable of negotiating such a path to safety that have been diagnosed with Alzheimer's disease or Alzheimer's related dementia, if the following requirements are met:

(1) A family member or legal representative of the resident, in consultation with the resident's primary physician and the facility, determines that the facility can meet the needs of the resident. The facility shall document the decision regarding continued placement in the facility through written verification by the family member, physician and the facility representative;

(2) The facility is equipped with an automatic sprinkler system, in compliance with National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire door system and smoke alarms in compliance with 13-3.4 of the 1997 Life Safety Codes for Existing Health Care Occupancy;

(3) In a multilevel facility, residents who are mentally incapable of negotiating a pathway to safety are housed only on the ground floor;

(4) The facility shall take necessary measures to provide residents with the opportunity to explore the facility and, if appropriate, its grounds;

(5) The facility shall be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility. In meeting such staffing requirements, every resident who is mentally incapable of negotiating a pathway to safety shall count as three residents. All on-duty staff of the facility shall, at all times, be awake, dressed and prepared to assist residents in case of emergency;

(6) Every resident mentally incapable of negotiating a pathway to safety in the facility shall be assessed by a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, with an assessment instrument utilized by the division of aging known as the minimum data set used for assessing residents of skilled nursing facilities:

(a) Upon admission;

(b) At least semiannually; and

(c) When a significant change has occurred in the resident's condition which may require additional services;

(7) Based on the assessment in subdivision (6) of this subsection, a licensed professional, as defined in sections 334.010 to 334.265, RSMo, chapter 335, RSMo, or chapter 337, RSMo, shall develop an individualized service plan for every resident who is mentally incapable of negotiating a pathway to safety. Such individualized service plan shall be implemented by the facility's staff to meet the specific needs of the resident;

(8) Every facility shall use a personal electronic monitoring device for any resident whose physician recommends the use of such device;

(9) All facility personnel who will provide direct care to residents who are mentally incapable of negotiating a pathway to safety shall receive at least twenty-four hours of training within the first thirty days of employment. At least twelve hours of such training shall be classroom instruction, with six classroom instruction hours and two on-the-job training hours related to the special needs, care and safety of residents with dementia;

(10) All personnel of the facility, regardless of whether such personnel provides direct care to residents who cannot negotiate a pathway to safety, shall receive on a quarterly basis at least four hours of in-service training, with at least two such hours relating to the care and safety of residents who are mentally incapable of negotiating a pathway to safety;

(11) Every facility shall make available and implement self-care, productive and leisure activity programs for persons with dementia which maximize and encourage the resident's optimal functional ability;

(12) Every facility shall develop and implement a plan to protect the rights,

privacy and safety of all residents and to prevent the financial exploitation of all residents; and

(13) A licensee of any licensed residential care facility or any residential care facility shall ensure that its facility does not accept or retain a resident who is mentally incapable of negotiating a normal pathway to safety using assistive devices and aids that:

(a) Has exhibited behaviors which indicate such resident is a danger to self or others;

(b) Is at constant risk of elopement;

(c) Requires physical restraint;

(d) Requires chemical restraint. As used in this subdivision, the following terms mean:

a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms;

b. "Convenience", any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interests;

c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing residents;

(e) Requires skilled nursing services as defined in subdivision (17) of section 198.003 for which the facility is not licensed or able to provide;

(f) Requires more than one person to simultaneously physically assist the resident with any activity of daily living, with the exception of bathing;

(g) Is bed-bound or chair-bound due to a debilitating or chronic condition.

4. The facility shall not care for any person unless such facility is able to provide appropriate services for and meet the needs of such person.

5. Nothing in this chapter shall prevent a facility from discharging a resident who is a danger to himself or herself, or to others.

6. The training requirements established in subdivisions (9) and (10) of subsection 3 of this section shall fully satisfy the training requirements for the program described in subdivision (18) of subsection 1 of section 208.152, RSMo.

7. The division of aging shall promulgate rules to ensure compliance with this section and to sanction facilities that fail to comply with this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to

delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

198.439. Sections 198.401 to 198.436 shall expire on September 30, [1999] **2002**.

Section 1. Complaints filed with the division of aging against a long-term care facility which allege that harm has occurred or is likely to occur to a resident or residents of the facility due to actions or the lack of actions taken by the facility shall be investigated within thirty days of receipt of such complaints. The purpose of such investigation shall be to ensure the safety, protection and care of all residents of the facility likely to be affected by the alleged action or inaction. Such investigation shall be in addition to the investigation requirements for abuse and neglect reports pursuant to section 198.070, RSMo. The division shall provide the results of all investigations in accordance with section 660.320, RSMo. The division shall provide the results of such investigation in writing to all parties to the complaint, and if requested, to any of the facility's residents, or their family members or guardians. Complaints and written results will be readily available for public access and review at the division of aging and at the long-term care facility. Personal information identifying the resident will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in question. This information will remain readily available for a period of time determined by the division of aging.

Section 2. The division shall ensure that any monitor selected to perform state investigations of long-term care facilities has no conflict of interest, and has no direct or indirect connection to the facility or its parent corporation.

Section 3. The division of aging shall develop flexible assessment procedures for individuals in long-term care and those considering long-term care services which follows the individual through the continuum of care, including periodic reassessment. By January 1, 2002, the division of aging shall promulgate rules and regulations to implement the new assessment system and shall make a report to the appropriate house and senate committees of the general assembly regarding the new assessment system. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

Section 4. 1. The division of aging shall inspect all facilities licensed by the division at least twice each year. Such inspections shall be conducted:

- (1) Without the prior notification of the facility; and**
- (2) At times of the day, on dates and at intervals which do not permit facilities to anticipate such inspections.**

2. The division shall annually reevaluate the inspection process to ensure the requirements of subsection 1 of this section are met.

Section 5. 1. The division of aging shall develop and implement a demonstration project designed to establish a licensure category for health care facilities that wish to provide treatment to persons with Alzheimer's disease or Alzheimer's related dementia. The division shall also:

- (1) Inform potential providers of the demonstration project and seek letters of intent;**
- (2) Review letters of intent and select provider organizations to participate in the demonstration project. Ten such organizations may develop such projects using an existing license and additional organizations shall be newly licensed facilities with no more than thirty beds per project. One demonstration project shall be at a stand-alone facility of no more than one hundred twenty beds designed and operated exclusively for the care of residents with Alzheimer's disease or dementia within a county of the first classification with a charter form of government with a population over nine hundred thousand. A total of not more than three hundred beds may be newly licensed through the demonstration projects. All projects shall maintain their pilot status until a complete evaluation is completed by the division of aging, in conjunction with a qualified Missouri school or university, and a written determination is made from such evaluation that the pilot project is successful;**
- (3) Monitor the participants' compliance with the criteria established in this section;**
- (4) Recommend legislation regarding the licensure of dementia-specific residential care based on the results of the demonstration project; and**
- (5) Submit a report regarding the division's activities and recommendations for administrative or legislative action on or before November fifteenth of each year to the governor, the president pro tem of the senate and the speaker of the house of representatives.**

2. The director of the division of aging shall:

- (1) Develop a reimbursement methodology to reasonably and adequately compensate the pilot projects for the costs of operation of the project, and require the filing of annual cost reports by each participating facility which shall include, but not be limited to, the cost equivalent of unpaid volunteer or donated labor;**

- (2) Process the license applications of project participants;**
- (3) Monitor each participant to assure its compliance with the requirements and that the life, health and safety of residents is assured;**
- (4) Require each participating facility to complete a minimum data set form for each resident occupying a pilot bed;**
- (5) Require the division of aging to assign a single team of the same surveyors to inspect and survey all participating facilities at least twice a year for the entire period of the project; and**
- (6) Submit to the president pro tem of the senate and speaker of the house of representatives copies of any statements of deficiencies, plans of correction and complaint investigation reports applying to project participants.**

3. Project participants shall:

- (1) Be licensed by the division of aging;**
- (2) Provide care only to persons who have been diagnosed with Alzheimer's disease or Alzheimer's related dementia;**
- (3) Have buildings and furnishings that are designed to provide for the resident's safety. Facilities shall have indoor and outdoor activity areas, and electronically controlled exits from the buildings and grounds to allow residents the ability to explore while preventing them from exiting the facility's grounds unattended;**
- (4) Be staffed twenty-four hours a day by the appropriate number and type of personnel necessary for the proper care of residents and upkeep of the facility;**
- (5) Conduct special staff training relating to the needs, care and safety of persons with Alzheimer's disease or Alzheimer's related dementia within the first thirty days of employment;**
- (6) Utilize personal electronic monitoring devices for any resident whose physician recommends use of such device;**
- (7) Permit the resident's physician, in consultation with the family members or health care advocates of the resident, to determine whether the facility meets the needs of the resident;**
- (8) Be equipped with an automatic sprinkler system, in compliance with the National Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an automated fire alarm system and smoke barriers in compliance with the 1997 Life Safety Codes for Existing Health Care Occupancy; and**
- (9) Implement a social model for the residential environment rather than an institutional medical model.**

4. For purposes of this section, "health care facilities for persons with Alzheimer's disease or Alzheimer's related dementia" means facilities that are specifically designed and operated to provide elderly individuals who have chronic

confusion or dementia illness, or both, with a safe, structured but flexible environment that encourages physical activity through a well developed recreational and aging in place, and activity program. Such program shall continually strive to promote the highest practicable physical and mental abilities and functioning of each resident.

Section 6. In consultation with consumers, providers and others, the division shall promulgate rules and regulations to implement the provisions of sections 1 to 6 of this act. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 1 to 6 of this act shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

Section 7. By January 1, 2000, the division of aging shall establish an informal dispute resolution pilot project in one area of the state to be designated by the division. Such pilot project shall require that, if requested, a division representative provide at least one face-to-face conference in a timely fashion with a facility resident or such resident's family members or guardians when a resident is the subject of a complaint investigation, or cited in a facility inspection or survey completed by the division pursuant to chapter 198, RSMo. The primary purpose of such face-to-face conference shall be to obtain information and facilitate a satisfactory resolution of any concerns communicated by a resident, a resident's family members or guardians. By December 31, 2001, the division shall report to the general assembly on the effectiveness of the pilot project, and include recommendations for continuing, expanding or modifying the project.

Section 8. Upon application for renewal by any residential care facility I or II which on the effective date of this act has been licensed for more than five years, is licensed for more than fifty beds and fails to maintain for any calendar year its occupancy level above thirty percent of its then licensed beds, the division of aging shall license only fifty beds for such facility.

Section 9. 1. The division of aging, in collaboration with qualified Missouri schools and universities, shall establish an aging-in-place pilot program at a maximum of four selected sites throughout the state which will provide a continuum of care for elders who need long-term care. One aging-in-place pilot program shall be at a thirty-five bed facility in a county of the first classification without a charter form of government with a population of at least ninety thousand but not more than one

hundred thousand and a county of the first classification with a population of at least forty-two thousand but less than forty-five thousand and a county of the third classification without a township form of government with a population of at least sixteen thousand nine hundred but less than seventeen thousand. For purposes of this section, "qualified Missouri schools and universities" means any Missouri school or university which has a school of nursing, a graduate nursing program, or any other similar program or specialized expertise in the areas of aging, long-term care or health services for the elderly.

2. The pilot program shall:

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

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

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

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

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

5. The division of aging may promulgate rules and regulations to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

Section 10. 1. The division of aging shall provide budget allotment tables to each area agency on aging by January first of each year. Each area agency on aging shall submit its area plan, area budget and service contracts to the division of aging by

March first of each year. Each April, the area agencies on aging shall present their plans to the division of aging in a public hearing scheduled by the division and held in the area served by the area agency on aging. Within thirty days of such hearing, the division shall report findings and recommendations to the board of directors for the area agency on aging, the area agency on aging advisory council, the members of the senate budget committee and the members of the house appropriations committee for social services and corrections.

2. Each area agency on aging shall include in its area plan performance measures and outcomes to be achieved for each year covered by the plan. Such measures and outcomes shall also be presented to the division during the public hearing.

3. The division of aging shall conduct on-site monitoring of each area agency on aging at least once a year. The division of aging shall send all monitoring reports to the area agency on aging advisory council and the board of directors for the area agency which is the subject of the reports.

Section 11. To ensure uniformity of application of regulation standards in long-term care facilities throughout the state, the department of social services shall:

(1) Evaluate the requirements for inspectors or surveyors of facilities, including the eligibility, training and testing requirements for the position. Based on the evaluation, the department shall develop and implement additional training and knowledge standards for inspectors and surveyors;

(2) Periodically evaluate the performance of the inspectors or surveyors regionally and statewide to identify any deviations or inconsistencies in regulation application. At a minimum, the Missouri on-site surveyor evaluation process, and the number and type of actions overturned by the informal dispute resolution process and formal appeal shall be used in the evaluation. Based on such evaluation, the department shall develop standards and a retraining process for the region, state, or individual inspector or surveyor, as needed;

(3) In addition to the provisions of subdivisions (1) and (2) of this section, the department shall develop a single uniform comprehensive and mandatory course of instruction for inspectors/surveyors on the practical application of enforcement of statutes, rules and regulations. Such course shall also be open to attendance by administrators and staff of facilities licensed pursuant to chapter 198, RSMo;

(4) With the full cooperation of and in conjunction with the department of health, evaluate the implementation and compliance of the provisions of subdivision (3) of subsection 1 of section 198.012, RSMo, in which rules, requirements, regulations and standards pursuant to section 197.080, RSMo, for residential care facilities II, intermediate care facilities and skilled nursing facilities attached to an acute care

hospital are consistent with the intent of chapter 198, RSMo. A report of the differences found in the evaluation conducted pursuant to this subdivision shall be made jointly by the departments of social services and health to the governor and members of the general assembly by January 1, 2000; and

(5) With the full cooperation and in conjunction with the department of health, develop rules and regulations requiring the exchange of information, including regulatory violations, between the departments to ensure the protection of individuals who are served by health care providers regulated by either the department of health or the department of social services.

Section 12. The provisions of sections 197.300 to 197.366, RSMo, shall not apply to any sixty bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand and which district also has within its boundaries a skilled nursing facility.

Section 13. The provisions of sections 197.300 to 197.366 shall not apply, as hereinafter stated, to a skilled nursing facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri general assembly, is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care. This exemption shall authorize no more than twenty additional skilled nursing beds at each of two facilities which do not have any skilled nursing beds as of January 1, 1999.

Section 14. For reimbursement or recoupment cases filed pursuant to subsection 3 of section 208.156, RSMo, jurisdiction is as outlined therein. The administrative hearing commission shall render a decision within three hundred days of filing the appeal. For each day the proceeding is continued or delayed by appellant, the time frame for rendering a decision is extended by one day. If the commission does not render a decision within three hundred days of filing, or as extended, the appellant may seek the same appeal in the circuit court of Cole County or in the circuit court where the facility is located. The circuit court performing review in lieu of the administrative hearing commission herein shall perform its review under the same guidelines and restrictions as the administrative hearing commission, except that the circuit court shall retain authority to render final decisions of law.

Section 15. For any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility, if the department of social services

maintains records of site inspections and violations of statutes, rules, or the terms or conditions of any license issued to such facility, the department shall also maintain records of compliance with such statutes, rules, or terms or conditions of any license, and shall specifically record in such records any actions taken by the facility that are above and beyond what is minimally required for compliance.

Section B. Because immediate action is necessary to provide continuity of care for the elderly the repeal of sections 197.313, 197.350, 197.360 and 197.365 and the repeal and reenactment of sections 197.305, 197.310, 197.315, 197.316, 197.317, 197.318, 197.320, 197.325, 197.330 and 197.335 of this act are deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and are hereby declared to be an emergency act within the meaning of the constitution, and the repeal of sections 197.313, 197.350, 197.360 and 197.365 and the repeal and reenactment of sections 197.305, 197.310, 197.315, 197.316, 197.317, 197.318, 197.320, 197.325, 197.330 and 197.335 of this act shall be in full force and effect on July 1, 1999, or upon its passage and approval, whichever later occurs.

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