

FIRST REGULAR SESSION

# HOUSE BILL NO. 327

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHAAF (Sponsor), ERVIN AND FLOOK (Co-sponsors).

0457L.01I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 197.310, 197.315, and 197.330, RSMo, and to enact in lieu thereof three new sections relating to the Missouri health facilities review committee.

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

Section A. Sections 197.310, 197.315, and 197.330, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 197.310, 197.315, and 197.330, to read as follows:

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] **One member who is professionally qualified in health insurance plan sales and administration;** and

(2) [Two members of the house of representatives appointed by the speaker, who shall be from different political parties] **One member who has professionally qualified experience in commercial development, financing, and lending;** and

(3) [Five members] **Two members with a doctorate of philosophy in economics;**

(4) **Two members who are professionally qualified as medical doctors or doctors of osteopathy, but who are not employees of a hospital or consultants to a hospital;**

(5) **Two members who are professionally experienced in hospital administration, but are not employed by a hospital or as consultants to a hospital;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           **(6) One member who is a registered nurse, but who is not an employee of a hospital**  
17 **or a consultant to a hospital.**

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19 **All members shall be** appointed by the governor with the advice and consent of the senate, not  
20 more than [three] **five** of whom shall be from the same political party. **All members shall serve**  
21 **four-year terms.**

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

23           4. [The members shall be appointed as soon as possible after September 28, 1979. One  
24 of the senate members, one of the house members and three of the members appointed by the  
25 governor shall serve until January 1, 1981, and the remaining members shall serve until January  
26 1, 1982. All subsequent members shall be appointed in the manner provided in subsection 2 of  
27 this section and shall serve terms of two years.

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

30           [6.] **5.** The committee shall review and approve or disapprove all applications for a  
31 certificate of need made under sections 197.300 to 197.366. It shall issue reasonable rules and  
32 regulations governing the submission, review and disposition of applications.

33           [7.] **6.** Members of the committee shall serve without compensation but shall be  
34 reimbursed for necessary expenses incurred in the performance of their duties.

35           [8.] **7.** Notwithstanding the provisions of subsection 4 of section 610.025, RSMo, the  
36 proceedings and records of the facilities review committee shall be subject to the provisions of  
37 chapter 610, RSMo.

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

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

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

12           4. If any person proposes to develop any new institutional health care service without  
13 a certificate of need as required by sections 197.300 to 197.366, the committee shall notify the

14 attorney general, and he shall apply for an injunction or other appropriate legal action in any  
15 court of this state against that person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197.330. 1. The committee shall:

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

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

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

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

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

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

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

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

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

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

30 **3. For all hearings held by the committee, including all public hearings under**  
31 **subdivision (3) of subsection 1 of this section:**

32 **(1) All testimony and other evidence taken during such hearings shall be under**  
33 **oath and subject to the penalty of perjury;**

34 **(2) The committee may, upon a majority vote of the committee, subpoena witnesses,**  
35 **and compel the attendance of witnesses, the giving of testimony, and the production of**  
36 **records;**

37 **(3) All ex parte communications between members of the committee and any**  
38 **interested party or witness which are related to the subject matter of a hearing shall be**  
39 **prohibited at any time prior to, during, or after such hearing;**

40 **(4) The provisions of sections 105.452 to 105.458, RSMo, regarding conflict of**  
41 **interest shall apply;**

42 **(5) In all hearings, there shall be a rebuttable presumption of the need for**  
43 **additional medical services and lower costs for such medical services in the affected region**  
44 **or community. Any party opposing the issuance of a certificate of need shall have the**  
45 **burden of proof to show by clear and convincing evidence that no such need exists or that**  
46 **the new facility will cause a substantial and continuing loss of medical services within the**  
47 **affected region or community;**

48 **(6) All hearings before the committee shall be governed by rules to be adopted and**  
49 **prescribed by the committee; except that, in all inquiries or hearings, the committee shall**  
50 **not be bound by the technical rules of evidence. No formality in any proceeding nor in the**  
51 **manner of taking testimony before the committee shall invalidate any decision made by the**  
52 **committee; and**

53 **(7) The committee shall have the authority, upon a majority vote of the committee,**  
54 **to assess the costs of court reporting transcription or the issuance of subpoenas to one or**  
55 **both of the parties to the proceedings.**

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