

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Bill No. 358, Page 2, Section 191.607, Line 16, by inserting after all of said section
2 and line the following:

3
4 "197.305. As used in sections 197.300 to 197.366, the following terms mean:

5 (1) "Affected persons", the person proposing the development of a new institutional health
6 service, the public to be served, and health care facilities within the service area in which the
7 proposed new health care service is to be developed;

8 (2) "Agency", the certificate of need program of the Missouri department of health and
9 senior services;

10 (3) "Capital expenditure", an expenditure by or on behalf of a health care facility which,
11 under generally accepted accounting principles, is not properly chargeable as an expense of
12 operation and maintenance;

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

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

19 (6) "Expenditure minimum" shall mean:

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

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

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

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

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

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(9) "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 (12) hereof costing in excess of one hundred fifty thousand dollars;

(e) Any change in licensed bed capacity of a health care facility licensed under chapter 198 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, provided that any such health care facility seeking ~~a nonapplicability review for~~ an increase in total beds or total bed capacity in an amount less than described in this paragraph shall be eligible for such review only if the facility has had no patient care class I deficiencies within the last eighteen months and has maintained at least an eighty-five percent average occupancy rate for the previous six quarters;

(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;

(10) "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;

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

(12) "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.

197.318. 1. 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.

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

3. 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 CFR, Section 412.23(e).

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

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

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

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

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

b. Has maintained ~~a ninety-percent~~ an eighty-five percent average occupancy rate for the

1 previous six quarters;

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

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

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

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

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

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

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

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

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

32 (5) A facility licensed pursuant to chapter 198 may transfer or sell individual long-term care
33 licensed and available beds to facilities qualifying pursuant to paragraphs (a) and (b) of subdivision
34 (1) of this subsection. Any facility which transfers or sells licensed and available beds shall not
35 expand its licensed bed capacity in that licensure category for a period of five years from the date
36 the licensure is relinquished and until the average occupancy of licensed and available beds in that
37 licensure category within a fifteen-mile radius is eighty-five percent for the prior six quarters. Any
38 facility which transfers or sells licensed and available beds shall have an average occupancy rate of
39 less than seventy percent in the last six quarters.

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

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

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

49 (3) The existing facility and proposed facility shall have the same owner or owners,

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

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

11 198.610. 1. The provisions of sections 198.610 to 198.630 shall be known and may be cited
 12 as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".

13 2. For purposes of sections 198.610 to 198.630, the following terms shall mean:

14 (1) "Authorized electronic monitoring", the placement and use of an electronic monitoring
 15 device by a resident in his or her room in accordance with the provisions of sections 198.610 to
 16 198.630;

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

18 (3) "Electronic monitoring device", a surveillance instrument with a fixed position video
 19 camera or an audio recording device, or a combination thereof, that is installed in a resident's room
 20 under the provisions of sections 198.610 to 198.630 and broadcasts or records activity or sounds
 21 occurring in the room;

22 (4) "Facility", any residential care facility, assisted living facility, intermediate care facility,
 23 or skilled nursing facility;

24 (5) "Resident", a person residing in a facility;

25 (6) "Resident's representative", a resident's legal representative.

26 198.612. 1. A resident may be permitted to conduct authorized electronic monitoring of the
 27 resident's room through the use of electronic monitoring devices placed in the room under the
 28 provisions of sections 198.610 to 198.630 if the facility in which the resident resides permits
 29 electronic monitoring devices in its policies and procedures and if the electronic monitoring devices
 30 comply with the facility's requirements therein.

31 2. Nothing in sections 198.610 to 198.630 shall be construed to allow the use of an
 32 electronic monitoring device to take still photographs or for the nonconsensual interception of
 33 private communications.

34 3. Except as otherwise provided in this section, a resident, a resident's representative, or the
 35 parent of a resident under eighteen years of age and the facility shall consent in writing on a
 36 notification and consent form prescribed by the department in order for authorized electronic
 37 monitoring to be conducted in the resident's room. If the resident has not affirmatively objected to
 38 the authorized electronic monitoring and the resident's physician determines that the resident lacks
 39 the ability to understand and appreciate the nature and consequences of electronic monitoring, the
 40 following individuals may consent on behalf of the resident in order of priority:

41 (1) An attorney-in-fact under a durable power of attorney for health care;

42 (2) The resident's representative;

43 (3) The resident's spouse;

44 (4) The resident's parent;

45 (5) The resident's adult child who has the written consent of all other adult children of the
 46 resident to act as the sole decision maker regarding authorized electronic monitoring; or

47 (6) The resident's adult brother or sister who has the written consent of all other adult
 48 siblings of the resident to act as the sole decision maker regarding authorized electronic monitoring.

49 4. Prior to another person, other than a resident's representative, consenting on behalf of a

1 resident eighteen years of age or older in accordance with the provisions of sections 198.610 to
 2 198.630, the resident shall be asked by that person, in the presence of a facility employee, if he or
 3 she wants authorized electronic monitoring to be conducted. The person shall explain to the
 4 resident:

- 5 (1) The type of electronic monitoring device to be used;
- 6 (2) The standard conditions that may be placed on the electronic monitoring device's use
 7 including those listed in subdivision (7) of subsection 2 of section 198.614;
- 8 (3) With whom the recording may be shared according to section 198.622; and
- 9 (4) The resident's ability to decline all recording.

10
 11 For the purposes of this subsection, a resident affirmatively objects if he or she orally, visually, or
 12 through the use of auxiliary aids or services declines authorized electronic monitoring. The
 13 resident's response shall be documented on the notification and consent form.

14 5. A resident or roommate may consent to authorized electronic monitoring with any
 15 conditions of the resident's choosing including, but not limited to, the list of standard conditions
 16 provided in subdivision (7) of subsection 2 of section 198.614. A resident or roommate may request
 17 that the electronic monitoring device be turned off or the visual recording component of the
 18 electronic monitoring device be blocked at any time.

19 6. Prior to the authorized electronic monitoring, a resident shall obtain the written consent of
 20 any other resident residing in the room on the notification and consent form prescribed by the
 21 department. Except as otherwise provided in this subsection, a roommate, a roommate's legal
 22 representative, or the parent of a roommate under eighteen years of age shall consent in writing to
 23 the authorized electronic monitoring in the resident's room. If the roommate has not affirmatively
 24 objected to the authorized electronic monitoring in accordance with subsection 4 of this section and
 25 the roommate's physician determines that the roommate lacks the ability to understand and
 26 appreciate the nature and consequences of electronic monitoring, the following individuals may
 27 consent on behalf of the roommate, in order of priority:

- 28 (1) An attorney-in-fact under a durable power of attorney for health care;
- 29 (2) The roommate's legal representative;
- 30 (3) The roommate's spouse;
- 31 (4) The roommate's parent;
- 32 (5) The roommate's adult child who has the written consent of all other adult children of the
 33 roommate to act as the sole decision maker regarding authorized electronic monitoring; or
- 34 (6) The roommate's adult brother or sister who has the written consent of all other adult
 35 siblings of the roommate to act as the sole decision maker regarding authorized electronic
 36 monitoring.

37 7. Consent by a roommate under subsection 6 of this section authorizes the resident's use of
 38 any recording obtained under sections 198.610 to 198.630 as provided under section 198.622.

39 8. Any resident previously conducting authorized electronic monitoring shall obtain consent
 40 from any new roommate before the resident may resume authorized electronic monitoring. If a new
 41 roommate does not consent to authorized electronic monitoring and the resident conducting the
 42 authorized electronic monitoring does not remove or disable the electronic monitoring device, the
 43 facility may turn off the device.

44 9. Consent may be withdrawn by the resident or roommate at any time, and the withdrawal
 45 of consent shall be documented in the resident's clinical record. If a roommate withdraws consent
 46 and the resident conducting the authorized electronic monitoring does not remove or disable the
 47 electronic monitoring device, the facility may turn off the electronic monitoring device.

48 198.614. 1. Authorized electronic monitoring may begin only after a notification and
 49 consent form prescribed by the department has been completed and submitted to the facility and the

1 facility consents.

2 2. A resident shall notify the facility in writing of his or her intent to install an electronic
 3 monitoring device by providing a completed notification and consent form prescribed by the
 4 department that shall include at minimum the following information:

5 (1) The resident's signed consent to electronic monitoring or the signature of the person
 6 consenting on behalf of the resident in accordance with section 198.612. If a person other than the
 7 resident signs the consent form, the form shall document the following:

8 (a) The date the resident was asked if he or she wants authorized electronic monitoring to be
 9 conducted in accordance with subsection 4 of section 198.612;

10 (b) Who was present when the resident was asked; and

11 (c) An acknowledgment that the resident did not affirmatively object;

12 (2) The resident's roommate's signed consent or the signature of the person consenting on
 13 behalf of the roommate in accordance with section 198.612, if applicable, and any conditions placed
 14 on the roommate's consent. If a person other than the roommate signs the consent form, the form
 15 shall document the following:

16 (a) The date the roommate was asked if he or she wants authorized electronic monitoring to
 17 be conducted in accordance with subsection 4 of section 198.612;

18 (b) Who was present when the roommate was asked; and

19 (c) An acknowledgment that the roommate did not affirmatively object;

20 (3) The type of electronic monitoring device to be used;

21 (4) Any installation needs such as mounting of a device to a wall or ceiling;

22 (5) The proposed date of installation for scheduling purposes;

23 (6) A copy of any contract for maintenance of the electronic monitoring device by a
 24 commercial entity;

25 (7) A list of standard conditions or restrictions that the facility, resident, or roommate may
 26 elect to place on the use of the electronic monitoring device including, but not limited to:

27 (a) Prohibiting audio recording;

28 (b) Prohibiting broadcasting of audio or video; or

29 (c) Turning off the electronic monitoring device or blocking the visual recording component
 30 of the electronic monitoring device for the duration of an exam or procedure by a health care
 31 professional; while dressing or bathing is performed; or for the duration of a visit with a spiritual
 32 advisor, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

33 (8) Any other condition or restriction elected by the facility, resident, or roommate on the
 34 use of an electronic monitoring device.

35 3. A copy of the completed notification and consent form shall be placed in the resident's
 36 and any roommate's clinical record and a copy shall be provided to the resident and his or her
 37 roommate, if applicable.

38 4. The department shall prescribe the notification and consent form required in this section
 39 no later than sixty days after the effective date of sections 198.610 to 198.630. If the department has
 40 not prescribed such a form by that date, the attorney general shall post a notification and consent
 41 form on its website for resident use until the department has prescribed the form.

42 198.616. 1. A resident authorized to conduct authorized electronic monitoring shall do so at
 43 his or her own expense, including paying purchase, installation, maintenance, and removal costs.

44 2. If a resident authorized to conduct authorized electronic monitoring chooses to install an
 45 electronic monitoring device that uses internet technology for visual or audio monitoring, such
 46 resident is responsible for contracting with an internet service provider.

47 3. The electronic monitoring device shall be placed in a conspicuously visible location in
 48 the room.

49 4. No facility shall charge the resident a fee for the cost of electricity used by an electronic

1 monitoring device.

2 5. All electronic monitoring device installations and supporting services shall comply with
3 the requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code (2015
4 edition).

5 198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a sign shall
6 be clearly and conspicuously posted at all building entrances accessible to visitors. The notice shall
7 be entitled "Electronic Monitoring" and shall state in large, easy-to-read type: "The rooms of some
8 residents may be monitored electronically by or on behalf of the residents."

9 2. A sign shall be clearly and conspicuously posted at the entrance to a resident's room
10 where authorized electronic monitoring is being conducted. The notice shall state in large, easy-to-
11 read type, "This room is electronically monitored."

12 3. The facility is responsible for installing and maintaining the signage required in this
13 section.

14 198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy
15 an electronic monitoring device installed in a resident's room without the permission of the resident
16 or the individual who consented on behalf of the resident and the facility, in accordance with section
17 198.612.

18 2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy a video or
19 audio recording obtained in accordance with sections 198.610 to 198.630 without the permission of
20 the resident or the individual who consented on behalf of the resident and the facility, in accordance
21 with section 198.612.

22 3. A person or entity that violates this section is guilty of a class B misdemeanor. A person
23 or entity that violates this section in the commission of or to conceal a misdemeanor offense is
24 guilty of a class A misdemeanor. A person or entity that violates this section in the commission of
25 or to conceal a felony offense is guilty of a class D felony.

26 4. It is not a violation of this section if a person or facility turns off the electronic monitoring
27 device or blocks the visual recording component of the electronic monitoring device at the direction
28 of the resident or the person who consented on behalf of the resident in accordance with section
29 198.612.

30 198.622. 1. No facility shall access any video or audio recording created through authorized
31 electronic monitoring without the written consent of the resident or the person who consented on
32 behalf of the resident and the facility, in accordance with section 198.612.

33 2. Except as required under the Freedom of Information Act, a recording or copy of a
34 recording made under sections 198.610 to 198.630 shall only be disseminated for the purpose of
35 addressing concerns relating to the health, safety, or welfare of a resident or residents.

36 3. The resident or person who consented on behalf of the resident in accordance with section
37 198.612 shall provide a copy of any video or audio recording to parties involved in a criminal or
38 administrative proceeding, upon a party's request, if the video or audio recording was made during
39 the time period that the conduct at issue in the proceeding allegedly occurred.

40 198.624. Any individual who has reasonable cause to believe, as a result of any video or
41 audio recording created through authorized electronic monitoring in accordance with the provisions
42 of sections 198.610 to 198.630, that a resident has been the victim of a sexual assault shall report
43 such suspected assault to a local law enforcement entity and provide such entity with a copy of the
44 video or audio recording. Subject to applicable rules of evidence and procedure, any video or audio
45 recording created through authorized electronic monitoring in accordance with the provisions of
46 sections 198.610 to 198.630 may be admitted into evidence in a civil, criminal, or administrative
47 proceeding if the contents of the recording have not been edited or artificially enhanced and the
48 video recording includes the date and time the events occurred.

49 198.626. Each facility shall report to the department, in a manner prescribed by the

department, the number of authorized electronic monitoring notification and consent forms received annually. The department shall report the total number of authorized electronic monitoring notification and consent forms received from facilities to the attorney general annually.

198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or intentional disclosure of a recording by a resident or a person who consents on behalf of the resident for any purpose not authorized by sections 198.610 to 198.630. Nothing in sections 198.610 to 198.630 shall permit or authorize a resident to use any device that in any way violates any other state or federal law or regulation.

2. No facility shall be civilly or criminally liable for a violation of a resident's right to privacy arising out of any electronic monitoring conducted under sections 198.610 to 198.630.

3. The department shall promulgate rules to adopt the form described in subsection 2 of section 198.614. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 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, 2019, shall be invalid and void.

198.630. 1. No person shall:

(1) Intentionally retaliate or discriminate against any resident for consenting to authorized electronic monitoring under sections 198.610 to 198.630; or

(2) Prevent the installation or use of an electronic monitoring device by a resident who has received authorization from the facility with notice and consent as required under section 198.614 that otherwise meets the requirements of sections 198.610 to 198.630.

2. Sections 198.601 to 198.630 shall not be interpreted to allow any facility to prohibit the use of recording devices in a manner authorized under section 542.402.

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

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

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

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.