FIRST REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1222 & 1342

101ST GENERAL ASSEMBLY

2492H.02C DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 208.225, RSMo, and to enact in lieu thereof four new sections relating to certificates of need.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.312, 197.315, 197.316, 197.318, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, 197.367, 197.705, 198.530, 208.169, and 208.225, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.705, 198.530, 208.169, and 208.225, to read as follows:

197.705. **1. For purposes of this section, the term "health care facilities" means:**

(1) Facilities licensed under chapter 198;

(2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012; and

(3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR 412.23(e).

2. All hospitals**, as defined in section 197.020,** and health care facilities**[**~~, defined in sections 197.020 and 197.305,~~**]** shall require all personnel providing services in such facilities to wear identification badges while acting within the scope of their employment. The identification badges of all personnel shall prominently display the licensure status of such personnel.

198.530. 1. **For purposes of this section, the term "continuing care retirement community" means a community that provides at the same site or location independent**

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.

housing, long-term health care, and other services to older persons not related by blood or marriage to the owner or operator of the community under an agreement effective for the life of the person or a specified period of time in excess of one year that guarantees or provides priority access to on-site health-related long-term care services when needed.

2. If an enrollee in a managed care organization is also a resident in a long-term care facility licensed pursuant to chapter 198, or a continuing care retirement community**[**~~, as defined in section 197.305~~**]**, such enrollee's managed care organization shall provide the enrollee with the option of receiving the covered service in the long-term care facility which serves as the enrollee's primary residence. For purposes of this section, "managed care organization" means any organization that offers any health plan certified by the department of health and senior services designed to provide incentives to medical care providers to manage the cost and use of care associated with claims, including, but not limited to, a health maintenance organization and preferred provider organization. The resident enrollee's managed care organization shall reimburse the resident facility for those services which would otherwise be covered by the managed care organization if the following conditions apply:

(1) The facility is willing and able to provide the services to the resident; and

(2) The facility and those health care professionals delivering services to residents pursuant to this section meet the licensing and training standards as prescribed by law; and

(3) The facility is certified through Medicare; and

(4) The facility and those health care professionals delivering services to residents pursuant to this section agree to abide by the terms and conditions of the health carrier's contracts with similar providers, abide by patient protection standards and requirements imposed by state or federal law for plan enrollees and meet the quality standards established by the health carrier for similar providers.

[~~2.~~**] 3.** The managed care organization shall reimburse the resident facility at a rate of reimbursement not less than the Medicare allowable rate pursuant to Medicare rules and regulations.

[~~3.~~**] 4.** The services in subsection **[**~~1~~**] 2** of this section shall include, but are not limited to, skilled nursing care, rehabilitative and other therapy services, and postacute care, as needed. Nothing in this section shall limit the managed care organization from utilizing contracted providers to deliver the services in the enrollee's resident facility.

[~~4.~~**] 5.** A resident facility shall not prohibit a health carrier's participating providers from providing covered benefits to an enrollee in the resident facility. A resident facility or health care professional shall not impose any charges on an enrollee for any service that is ancillary to, a component of, or in support of the services provided under this section when the services are provided by a health carrier's participating provider, or otherwise create a disincentive for the use

of the health carrier's participating providers. Any violation of the requirements of this subsection by the resident facility shall be considered abuse or neglect of the resident enrollee.

208.169. **[**~~1.~~**]** Notwithstanding other provisions of this chapter, including but not limited to sections 208.152, 208.153, 208.159 and 208.162**[**~~:~~

~~(1) There shall be no revisions to a facility's reimbursement rate for providing nursing care services under this chapter upon a change in ownership, management control, operation, stock, leasehold interests by whatever form for any facility previously licensed or certified for participation in the Medicaid program. Increased costs for the successor owner, management or leaseholder that result from such a change shall not be recognized for purposes of reimbursement;~~

~~(2) In the case of a newly built facility or part thereof which is less than two years of age and enters the Title XIX program under this chapter after July 1, 1983, a reimbursement rate shall be assigned based on the lesser of projected estimated operating costs or one hundred ten percent of the median rate for the facility's class to include urban and rural categories for each level of care including ICF only and SNF/ICF. The rates set under this provision shall be effective for a period of twelve months from the effective date of the provider agreement at which time the rate for the future year shall be set in accordance with reported costs of the facility recognized under the reimbursement plan and as provided in subdivisions (3) and (4) of this subsection. Rates set under this section may in no case exceed the maximum ceiling amounts in effect under the reimbursement regulation;~~

~~(3) Reimbursement for capital related expenses for newly built facilities entering the Title XIX program after March 18, 1983, shall be calculated as the building and building equipment rate, movable equipment rate, land rate, and working capital rate.~~

~~(a) The building and building equipment rate will be the lower of:~~

~~a. Actual acquisition costs, which is the original cost to construct or acquire the building, not to exceed the costs as determined in section 197.357; or~~

~~b. Reasonable construction or acquisition cost computed by applying the regional Dodge Construction Index for 1981 with a trend factor, if necessary, or another current construction cost measure multiplied by one hundred eight percent as an allowance for fees authorized as architectural or legal not included in the Dodge Index Value, multiplied by the square footage of the facility not to exceed three hundred twenty-five square feet per bed, multiplied by the ratio of forty minus the actual years of the age of the facility divided by forty; and multiplied by a return rate of twelve percent; and divided by ninety-three percent of the facility's total available beds times three hundred sixty-five days.~~

~~(b) The maximum movable equipment rate will be fifty-three cents per bed day.~~

~~(c) The maximum allowable land area is defined as five acres for a facility with one hundred or less beds and one additional acre for each additional one hundred beds or fraction thereof for a facility with one hundred one or more beds.~~

~~(d) The land rate will be calculated as:~~

~~a. For facilities with land areas at or below the maximum allowable land area, multiply the acquisition cost of the land by the return rate of twelve percent, divide by ninety-three percent of the facility's total available beds times three hundred sixty-five days.~~

~~b. For facilities with land areas greater than the maximum allowable land area, divide the acquisition cost of the land by the total acres, multiply by the maximum allowable land area, multiply by the return rate of twelve percent, divide by ninety-three percent of the facility's total available beds times three hundred sixty-five days.~~

~~(e) The maximum working capital rate will be twenty cents per day;~~

~~(4) If a provider does not provide the actual acquisition cost to determine a reimbursement rate under subparagraph a. of paragraph (a) of subdivision (3) of subsection 1 of this section, the sum of the building and building equipment rate, movable equipment rate, land rate, and working capital rate shall be set at a reimbursement rate of six dollars;~~

~~(5)~~**]** **,** for each state fiscal year a negotiated trend factor shall be applied to each facility's Title XIX per diem reimbursement rate. The trend factor shall be determined through negotiations between the department and the affected providers and is intended to hold the providers harmless against increase in cost. In no circumstances shall the negotiated trend factor to be applied to state funds exceed the health care finance administration market basket price index for that year. The provisions of this subdivision shall apply to fiscal year 1996 and thereafter.

[~~2. The provisions of subdivisions (1), (2), (3), and (4) of subsection 1 of this section shall remain in effect until July 1, 1989, unless otherwise provided by law.~~**]**

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. **(1) For purposes of this subsection, the term "capital expenditures" means expenditures by or on behalf of a facility that, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance.**

(2) 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.

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

[~~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 service, the public to be served, and health care facilities within the service area in which the proposed new health care service is to be developed;~~

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

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

~~(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) "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;~~

~~(6) "Expenditure minimum" shall mean:~~

~~(a) For beds in existing or proposed health care facilities licensed pursuant to chapter 198 and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, 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 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 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 CFR, 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;~~

~~(7) "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;~~

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

~~(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.~~**]**

[~~197.310. 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 197.366. 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, the proceedings and records of the facilities review committee shall be subject to the provisions of chapter 610.~~**]**

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

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

[~~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 197.366, 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 pursuant to sections 197.300 to 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 skilled to an 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. The provisions of this subsection shall not apply to hospitals operated by the state and licensed under this chapter, except for department of mental health state-operated psychiatric hospitals.~~

~~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 intellectually disabled.~~

~~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:~~

~~(1) 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; or~~

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

[~~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, 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 and senior services, bring an action in a circuit court of competent jurisdiction for violation of this section.~~**]**

[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 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 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 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.~~

~~5. 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 health and senior services 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.~~

~~6. Nothing in this section shall prohibit a health care facility licensed pursuant to chapter 198 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 to meet the objectives of sections 197.300 to 197.366 including the power to establish criteria and standards to review new types of equipment or service. Any rule or portion of a rule, as that term is defined in section 536.010, 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 and, if applicable, section 536.028. 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 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, 1999, shall be invalid and void.~~**]**

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

[~~197.326. 1. Any person who is paid either as part of his or her normal employment or as a lobbyist to support or oppose any project before the health facilities review committee shall register as a lobbyist pursuant to chapter 105 and shall also register with the staff of the health facilities review committee for every project in which such person has an interest and indicate whether such person supports or opposes the named project. The registration shall also include the names and addresses of any person, firm, corporation or association that the person registering represents in relation to the named project. Any person violating the provisions of this subsection shall be subject to the penalties specified in section 105.478.~~

~~2. A member of the general assembly who also serves as a member of the health facilities review committee is prohibited from soliciting or accepting campaign contributions from any applicant or person speaking for an applicant or any opponent to any application or persons speaking for any opponent while such application is pending before the health facilities review committee.~~

~~3. Any person regulated by chapter 197 or 198 and any officer, attorney, agent and employee thereof, shall not offer to any committee member or to any person employed as staff to the committee, any office, appointment or position, or any present, gift, entertainment or gratuity of any kind or any campaign~~

~~contribution while such application is pending before the health facilities review committee. Any person guilty of knowingly violating the provisions of this section shall be punished as follows: For the first offense, such person is guilty of a class B misdemeanor; and for the second and subsequent offenses, such person is guilty of a class E felony.~~]

[~~197.327. 1. If a facility is granted a certificate of need pursuant to sections 197.300 to 197.365 based on an application stating a need for additional Medicaid beds, such beds shall be used for Medicaid patients and no other.~~

~~2. Any person who violates the provisions of subsection 1 of this section shall be liable to the state for civil penalties of one hundred dollars for every day of such violation. Each nonMedicaid patient placed in a Medicaid bed shall constitute a separate violation.~~

~~3. The attorney general shall, upon the request of the department, bring an action in a circuit court of competent jurisdiction to recover the civil penalty. The department may bring such an action itself. The civil action may be brought in the circuit court of Cole County or, at the option of the director, in another county which has venue of an action against the person under other provisions of law.~~]

[~~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 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) 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;~~

~~(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;~~

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

~~(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~~

~~(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 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 may file an appeal to be heard de novo by the administrative hearing commissioner, the circuit court of Cole County or the circuit court in the county within which such health care service or facility is proposed to be developed.~~**]**

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

[~~197.345. Any health facility with a project for facilities or services for which a binding construction or purchase contract has been executed prior to October 1, 1980, or health care facility which has commenced operations prior to October 1, 1980, shall be deemed to have received a certificate of need, except that such certificate of need shall be subject to forfeiture under the provisions of subsections 8 and 9 of section 197.315.~~**]**

[~~197.355. The legislature may not appropriate any money for capital expenditures for health care facilities until a certificate of need has been issued for such expenditures.~~**]**

[~~197.357. For the purposes of reimbursement under section 208.152, project costs for new institutional health services in excess of ten percent of the initial project estimate whether or not approval was obtained under subsection 7 of section 197.315 shall not be eligible for reimbursement for the first three years that a facility receives payment for services provided under section 208.152. The initial estimate shall be that amount for which the original certificate of need was obtained or, in the case of facilities for which a binding construction or purchase contract was executed prior to October 1, 1980, the amount of that contract. Reimbursement for these excess costs after the first three years shall not be made until a certificate of need has been granted for the excess project costs. The~~

~~provisions of this section shall apply only to facilities which file an application for a certificate of need or make application for cost-overrun review of their original application or waiver after August 13, 1982.~~**]**

[~~197.366. The term "health care facilities" in sections 197.300 to 197.366 shall mean:~~

~~(1) Facilities licensed under chapter 198;~~

~~(2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012;~~

~~(3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 CFR, section 412.23(e); and~~

~~(4) Construction of a new hospital as defined in chapter 197.~~**]**

[~~197.367. Upon application for renewal by any residential care facility or assisted living facility 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 department of health and senior services shall license only fifty beds for such facility.~~**]**

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