

HOUSE BILL NO. 433

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHIPMAN.

1066H.011

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, and 197.367, RSMo, 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197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, and 197.367, RSMo, are repealed, to read as follows:

~~[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~~

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.

- 14 sufficiently satisfies the criteria prescribed for such projects by sections 197.300
15 to 197.366;
- 16 ~~(5) "Develop", to undertake those activities which on their completion~~
17 ~~will result in the offering of a new institutional health service or the incurring of~~
18 ~~a financial obligation in relation to the offering of such a service;~~
- 19 ~~(6) "Expenditure minimum" shall mean:~~
- 20 ~~(a) For beds in existing or proposed health care facilities licensed~~
21 ~~pursuant to chapter 198 and long-term care beds in a hospital as described in~~
22 ~~subdivision (3) of subsection 1 of section 198.012, six hundred thousand dollars~~
23 ~~in the case of capital expenditures, or four hundred thousand dollars in the case~~
24 ~~of major medical equipment, provided, however, that prior to January 1, 2003,~~
25 ~~the expenditure minimum for beds in such a facility and long-term care beds in~~
26 ~~a hospital described in section 198.012 shall be zero, subject to the provisions of~~
27 ~~subsection 7 of section 197.318;~~
- 28 ~~(b) For beds or equipment in a long-term care hospital meeting the~~
29 ~~requirements described in 42 CFR, Section 412.23(e), the expenditure minimum~~
30 ~~shall be zero; and~~
- 31 ~~(c) For health care facilities, new institutional health services or beds not~~
32 ~~described in paragraph (a) or (b) of this subdivision one million dollars in the~~
33 ~~case of capital expenditures, excluding major medical equipment, and one~~
34 ~~million dollars in the case of medical equipment;~~
- 35 ~~(7) "Health service area", a geographic region appropriate for the~~
36 ~~effective planning and development of health services, determined on the basis~~
37 ~~of factors including population and the availability of resources, consisting of a~~
38 ~~population of not less than five hundred thousand or more than three million;~~
- 39 ~~(8) "Major medical equipment", medical equipment used for the~~
40 ~~provision of medical and other health services;~~
- 41 ~~(9) "New institutional health service":~~
- 42 ~~(a) The development of a new health care facility costing in excess of the~~
43 ~~applicable expenditure minimum;~~
- 44 ~~(b) The acquisition, including acquisition by lease, of any health care~~
45 ~~facility, or major medical equipment costing in excess of the expenditure~~
46 ~~minimum;~~
- 47 ~~(c) Any capital expenditure by or on behalf of a health care facility in~~
48 ~~excess of the expenditure minimum;~~
- 49 ~~(d) Predevelopment activities as defined in subdivision (12) hereof~~
50 ~~costing in excess of one hundred fifty thousand dollars;~~
- 51 ~~(e) Any change in licensed bed capacity of a health care facility licensed~~
52 ~~under chapter 198 which increases the total number of beds by more than ten or~~
53 ~~more than ten percent of total bed capacity, whichever is less, over a two-year~~
54 ~~period, provided that any such health care facility seeking a nonapplicability~~
55 ~~review for an increase in total beds or total bed capacity in an amount less than~~
56 ~~described in this paragraph shall be eligible for such review only if the facility~~

57 has had no patient care class I deficiencies within the last eighteen months and
 58 has maintained at least an eighty-five percent average occupancy rate for the
 59 previous six quarters;

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

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

68 ~~_____ (10) "Nonsubstantive projects", projects which do not involve the
 69 addition, replacement, modernization or conversion of beds or the provision of
 70 a new health service but which include a capital expenditure which exceeds the
 71 expenditure minimum and are due to an act of God or a normal consequence of
 72 maintaining health care services, facility or equipment;~~

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

76 ~~_____ (12) "Predevelopment activities", expenditures for architectural designs,
 77 plans, working drawings and specifications, and any arrangement or commitment
 78 made for financing; but excluding submission of an application for a certificate
 79 of need.]~~

80

~~2 [197.310. 1. The "Missouri Health Facilities Review Committee" is
 3 hereby established. The agency shall provide clerical and administrative support
 4 to the committee. The committee may employ additional staff as it deems
 5 necessary.~~

~~6 _____ 2. The committee shall be composed of:~~

~~7 _____ (1) Two members of the senate appointed by the president pro tem, who
 8 shall be from different political parties; and~~

~~9 _____ (2) Two members of the house of representatives appointed by the
 10 speaker, who shall be from different political parties; and~~

~~11 _____ (3) Five members appointed by the governor with the advice and consent
 12 of the senate, not more than three of whom shall be from the same political party.~~

~~13 _____ 3. No business of this committee shall be performed without a majority
 14 of the full body.~~

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

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

23 ~~6. The committee shall review and approve or disapprove all applications~~
 24 ~~for a certificate of need made under sections 197.300 to 197.366. It shall issue~~
 25 ~~reasonable rules and regulations governing the submission, review and~~
 26 ~~disposition of applications.~~

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

29 ~~8. Notwithstanding the provisions of subsection 4 of section 610.025, the~~
 30 ~~proceedings and records of the facilities review committee shall be subject to the~~
 31 ~~provisions of chapter 610.]~~
 32

2 [197.311. No member of the Missouri health facilities review committee
 3 may accept a political donation from any applicant for a license.]

2 [197.312. A certificate of need shall not be required for any institution
 3 previously owned and operated for or in behalf of a city not within a county
 4 which chooses to be licensed as a facility defined under subdivision (22) or (23)
 5 of section 198.006 for a facility of ninety beds or less that is owned or operated
 6 by a not-for-profit corporation which is exempt from federal income tax as an
 7 organization described in section 501(c)(3) of the Internal Revenue Code of
 8 1986, which is controlled directly by a religious organization and which has
 9 received approval by the department of health and senior services of plans for
 10 construction of such facility by August 1, 1995, and is licensed by the department
 11 of health and senior services by July 1, 1996, as a facility defined under
 12 subdivision (22) or (23) of section 198.006 or for a facility, serving exclusively
 13 mentally ill, homeless persons, of sixteen beds or less that is owned or operated
 14 by a not-for-profit corporation which is exempt from federal income tax which
 15 is described in section 501(c)(3) of the Internal Revenue Code of 1986, which is
 16 controlled directly by a religious organization and which has received approval
 17 by the department of health and senior services of plans for construction of such
 18 facility by May 1, 1996, and is licensed by the department of health and senior
 19 services by July 1, 1996, as a facility defined under subdivision (22) or (23) of
 20 section 198.006 or an assisted living facility located in a city not within a county
 21 operated by a not for profit corporation which is exempt from federal income tax
 22 which is described in section 501(c)(3) of the Internal Revenue Code of 1986,
 23 which is controlled directly by a religious organization and which is licensed for
 24 one hundred beds or less on or before August 28, 1997.]

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

- 4 ~~2. Only those new institutional health services which are found by the~~
5 ~~committee to be needed shall be granted a certificate of need. Only those new~~
6 ~~institutional health services which are granted certificates of need shall be offered~~
7 ~~or developed within the state. No expenditures for new institutional health~~
8 ~~services in excess of the applicable expenditure minimum shall be made by any~~
9 ~~person unless a certificate of need has been granted.~~
- 10 ~~3. After October 1, 1980, no state agency charged by statute to license or~~
11 ~~certify health care facilities shall issue a license to or certify any such facility, or~~
12 ~~distinct part of such facility, that is developed without obtaining a certificate of~~
13 ~~need.~~
- 14 ~~4. If any person proposes to develop any new institutional health care~~
15 ~~service without a certificate of need as required by sections 197.300 to 197.366,~~
16 ~~the committee shall notify the attorney general, and he shall apply for an~~
17 ~~injunction or other appropriate legal action in any court of this state against that~~
18 ~~person.~~
- 19 ~~5. After October 1, 1980, no agency of state government may appropriate~~
20 ~~or grant funds to or make payment of any funds to any person or health care~~
21 ~~facility which has not first obtained every certificate of need required pursuant~~
22 ~~to sections 197.300 to 197.366.~~
- 23 ~~6. A certificate of need shall be issued only for the premises and persons~~
24 ~~named in the application and is not transferable except by consent of the~~
25 ~~committee.~~
- 26 ~~7. Project cost increases, due to changes in the project application as~~
27 ~~approved or due to project change orders, exceeding the initial estimate by more~~
28 ~~than ten percent shall not be incurred without consent of the committee.~~
- 29 ~~8. Periodic reports to the committee shall be required of any applicant~~
30 ~~who has been granted a certificate of need until the project has been completed.~~
31 ~~The committee may order the forfeiture of the certificate of need upon failure of~~
32 ~~the applicant to file any such report.~~
- 33 ~~9. A certificate of need shall be subject to forfeiture for failure to incur~~
34 ~~a capital expenditure on any approved project within six months after the date of~~
35 ~~the order. The applicant may request an extension from the committee of not~~
36 ~~more than six additional months based upon substantial expenditure made.~~
- 37 ~~10. Each application for a certificate of need must be accompanied by an~~
38 ~~application fee. The time of filing commences with the receipt of the application~~
39 ~~and the application fee. The application fee is one thousand dollars, or one-tenth~~
40 ~~of one percent of the total cost of the proposed project, whichever is greater. All~~
41 ~~application fees shall be deposited in the state treasury. Because of the loss of~~
42 ~~federal funds, the general assembly will appropriate funds to the Missouri health~~
43 ~~facilities review committee.~~
- 44 ~~11. In determining whether a certificate of need should be granted, no~~
45 ~~consideration shall be given to the facilities or equipment of any other health care~~
46 ~~facility located more than a fifteen-mile radius from the applying facility.~~

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

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

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

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

57 ~~16. The provisions of this section shall not apply to facilities operated by~~
58 ~~the state, and appropriation of funds to such facilities by the general assembly~~
59 ~~shall be deemed in compliance with this section, and such facilities shall be~~
60 ~~deemed to have received an appropriate certificate of need without payment of~~
61 ~~any fee or charge. The provisions of this subsection shall not apply to hospitals~~
62 ~~operated by the state and licensed under this chapter, except for department of~~
63 ~~mental health state-operated psychiatric hospitals.~~

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

67 ~~18. To assure the safe, appropriate, and cost-effective transfer of new~~
68 ~~medical technology throughout the state, a certificate of need shall not be~~
69 ~~required for the purchase and operation of:~~

70 ~~(1) Research equipment that is to be used in a clinical trial that has~~
71 ~~received written approval from a duly constituted institutional review board of~~
72 ~~an accredited school of medicine or osteopathy located in Missouri to establish~~
73 ~~its safety and efficacy and does not increase the bed complement of the institution~~
74 ~~in which the equipment is to be located. After the clinical trial has been~~
75 ~~completed, a certificate of need must be obtained for continued use in such~~
76 ~~facility; or~~

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

79

2 ~~[197.316. 1. The provisions of subsection 10 of section 197.315 and~~
3 ~~sections 197.317 and 197.318 shall not apply to facilities which are licensed~~
4 ~~pursuant to the provisions of chapter 198, which are designed and operated~~
5 ~~exclusively for the care and treatment of persons with acquired human~~
6 ~~immunodeficiency syndrome, AIDS.~~

7 ~~2. If a facility is granted a certificate of need and is found to be exempt~~
8 ~~from the provisions of subsection 10 of section 197.315 and sections 197.317 and~~
9 ~~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.

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

13 ~~4. The attorney general shall, upon request of the department of health~~
14 ~~and senior services, bring an action in a circuit court of competent jurisdiction for~~
15 ~~violation of this section.]~~

16

~~[197.318. 1. As used in this section, the term "licensed and available"~~
2 ~~means beds which are actually in place and for which a license has been issued.~~

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

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

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

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

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

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

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

20 ~~b. Has maintained a ninety-percent average occupancy rate for the~~
21 ~~previous six quarters;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 ~~6. Nothing in this section shall prohibit a health care facility licensed~~
81 ~~pursuant to chapter 198 from being replaced in its entirety within fifteen miles of~~
82 ~~its existing site so long as the existing facility and proposed or replacement~~
83 ~~facility have the same owner or owners regardless of corporate or business~~
84 ~~structure and the health care facility being replaced remains unlicensed and~~
85 ~~unused for any long-term care services whether they do or do not require a license~~
86 ~~from the date of licensure of the replacement facility.]~~
87

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

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

2 ~~[197.326. 1. Any person who is paid either as part of his or her normal~~
3 ~~employment or as a lobbyist to support or oppose any project before the health~~
4 ~~facilities review committee shall register as a lobbyist pursuant to chapter 105~~
5 ~~and shall also register with the staff of the health facilities review committee for~~
6 ~~every project in which such person has an interest and indicate whether such~~
7 ~~person supports or opposes the named project. The registration shall also include~~
8 ~~the names and addresses of any person, firm, corporation or association that the~~
9 ~~person registering represents in relation to the named project. Any person~~
10 ~~violating the provisions of this subsection shall be subject to the penalties~~
11 ~~specified in section 105.478.~~

12 ~~2. A member of the general assembly who also serves as a member of the~~
13 ~~health facilities review committee is prohibited from soliciting or accepting~~
~~campaign contributions from any applicant or person speaking for an applicant~~

14 or any opponent to any application or persons speaking for any opponent while
 15 such application is pending before the health facilities review committee.

16 ~~3. Any person regulated by chapter 197 or 198 and any officer, attorney,
 17 agent and employee thereof, shall not offer to any committee member or to any
 18 person employed as staff to the committee, any office, appointment or position,
 19 or any present, gift, entertainment or gratuity of any kind or any campaign
 20 contribution while such application is pending before the health facilities review
 21 committee. Any person guilty of knowingly violating the provisions of this
 22 section shall be punished as follows: For the first offense, such person is guilty
 23 of a class B misdemeanor; and for the second and subsequent offenses, such
 24 person is guilty of a class E felony.]~~

25

2 ~~[197.327. 1. If a facility is granted a certificate of need pursuant to
 3 sections 197.300 to 197.365 based on an application stating a need for additional
 4 Medicaid beds, such beds shall be used for Medicaid patients and no other.~~

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

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

14

15 ~~[197.330. 1. The committee shall:~~

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

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

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

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

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

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

21 ~~_____ (7) Provide for the availability, based on demonstrated need, of both~~
 22 ~~medical and osteopathic facilities and services to protect the freedom of patient~~
 23 ~~choice; and~~

24 ~~_____ (8) Establish by regulation procedures to review, or grant a waiver from~~
 25 ~~review, nonsubstantive projects.~~

26
 27 ~~_____ The term "filed" or "filing" as used in this section shall mean delivery to the staff~~
 28 ~~of the health facilities review committee the document or documents the~~
 29 ~~applicant believes constitute an application.~~

30 ~~_____ 2. Failure by the committee to issue a written decision on an application~~
 31 ~~for a certificate of need within the time required by this section shall constitute~~
 32 ~~approval of and final administrative action on the application, and is subject to~~
 33 ~~appeal pursuant to section 197.335 only on the question of approval by operation~~
 34 ~~of law.]~~

35
 2 ~~[197.335. Within thirty days of the decision of the committee, the~~
 3 ~~applicant may file an appeal to be heard de novo by the administrative hearing~~
 4 ~~commissioner, the circuit court of Cole County or the circuit court in the county~~
 5 ~~within which such health care service or facility is proposed to be developed.]~~

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

2 ~~[197.345. Any health facility with a project for facilities or services for~~
 3 ~~which a binding construction or purchase contract has been executed prior to~~
 4 ~~October 1, 1980, or health care facility which has commenced operations prior~~
 5 ~~to October 1, 1980, shall be deemed to have received a certificate of need, except~~
 6 ~~that such certificate of need shall be subject to forfeiture under the provisions of~~
 7 ~~subsections 8 and 9 of section 197.315.]~~

2 ~~[197.355. The legislature may not appropriate any money for capital~~
 3 ~~expenditures for health care facilities until a certificate of need has been issued~~
 4 ~~for such expenditures.]~~

2 ~~[197.357. For the purposes of reimbursement under section 208.152,~~
 3 ~~project costs for new institutional health services in excess of ten percent of the~~

3 initial project estimate whether or not approval was obtained under subsection 7
 4 of section 197.315 shall not be eligible for reimbursement for the first three years
 5 that a facility receives payment for services provided under section 208.152. The
 6 initial estimate shall be that amount for which the original certificate of need was
 7 obtained or, in the case of facilities for which a binding construction or purchase
 8 contract was executed prior to October 1, 1980, the amount of that contract.
 9 Reimbursement for these excess costs after the first three years shall not be made
 10 until a certificate of need has been granted for the excess project costs. The
 11 provisions of this section shall apply only to facilities which file an application
 12 for a certificate of need or make application for cost-overrun review of their
 13 original application or waiver after August 13, 1982.]
 14

2 [197.366. The term "health care facilities" in sections 197.300 to 197.366
 shall mean:

- 3 ~~_____ (1) Facilities licensed under chapter 198;~~
- 4 ~~_____ (2) Long-term care beds in a hospital as described in subdivision (3) of~~
 5 ~~subsection 1 of section 198.012;~~
- 6 ~~_____ (3) Long-term care hospitals or beds in a long-term care hospital meeting~~
 7 ~~the requirements described in 42 CFR, section 412.23(e); and~~
- 8 ~~_____ (4) Construction of a new hospital as defined in chapter 197.]~~
 9

2 [197.367. Upon application for renewal by any residential care facility
 3 or assisted living facility which on the effective date of this act has been licensed
 4 for more than five years, is licensed for more than fifty beds and fails to maintain
 5 for any calendar year its occupancy level above thirty percent of its then licensed
 6 beds, the department of health and senior services shall license only fifty beds for
 such facility.]

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