

SECOND REGULAR SESSION

SENATE BILL NO. 1029

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

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TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 197.317, 197.318, 198.015 and 198.022, RSMo, relating to certificate of need, and to enact in lieu thereof four new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 197.317, 197.318, 198.015 and 198.022, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 197.317, 197.318, 198.015 and 198.022, to read as follows:

- 197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:
- (1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;
 - (2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision (10) of section 197.305; nor
 - (3) The reallocation of intermediate care facility or skilled nursing facility beds of existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities

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

operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds. [However, after January 1, 2003, nothing in this section shall prohibit the Missouri health facilities review committee from issuing a certificate of need for additional beds in existing health care facilities or for new beds in new health care facilities or for the reallocation of licensed beds, provided that no construction shall begin prior to January 1, 2004.] The provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of this section.

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

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

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

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

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

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

[6.] 5. 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.

[7.] 6. 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).

7. Sections 197.317 and 197.318 notwithstanding, the Missouri health facilities review committee shall issue a certificate of need to any facility licensed pursuant to chapter 198, RSMo, to purchase from any other facility licensed pursuant to chapter 198, RSMo, any number of licensed beds and relocate such beds to the site of the purchasers choice.

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

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

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

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

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

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

(c) Has made an effort to purchase beds for [eighteen] **twelve** 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. A copy certified by the offeror as an offer to purchase beds from another licensed facility in the same licensure category; [and] **or**

b. In an effort to promote continuum of care, as an offer to purchase beds in another licensed category of up to ten percent of the total licensed beds of the buyer; or

(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] **no more than thirty beds or within a different category by ten percent;**

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] **or within a different category by no more than ten beds;**

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)] In an effort to promote continuum of care, a multi-unit housing with services facility may offer to purchase residential care or skilled nursing beds of up to ten percent of its current assisted living beds;

(a) The facility shall submit a plan to the division of standards and licensure and, if approved, the division shall issue a temporary license;

(b) The facility shall work with the health facilities review committee to identify a seller; and

(c) The facility shall then apply for licensure of the purchased beds;

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

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

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

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

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

(3) The existing facility and proposed facility shall have the same owner or owners, regardless of corporate or business structure, and such owner or owners shall stipulate in writing that the existing facility beds to be replaced will not later be used to provide long-term care services. If the facility is being operated under a lease, both the lessee and the owner of the existing facility shall stipulate the same in writing.] **A facility which is licensed as a skilled nursing facility, a residential care facility I, or a residential care facility II pursuant to chapter 198, RSMo, may obtain joint licensure while retaining the same number of beds.**

(1) The facility shall submit a plan to the division of health standards and licensure and, if approved, the division shall serve a temporary license;

(2) The facility shall make the changes necessary to fulfill the licensure requirements and then apply for licensure in the new category.

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

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

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

3. If during the period in which a license is in effect, a licensed operator which is a partnership, limited partnership, or corporation undergoes any of the following changes, or a new corporation, partnership, limited partnership or other entity assumes operation of a facility whether by one or by more than one action, the current operator shall notify the department of the intent to change operators and the succeeding operator shall within ten working days of such change apply for a new license:

(1) With respect to a partnership, a change in the majority interest of general partners;

(2) With respect to a limited partnership, a change in the general partner or in the majority interest of limited partners;

(3) With respect to a corporation, a change in the persons who own, hold or have the power to vote the majority of any class of securities issued by the corporation.

4. Licenses shall be posted in a conspicuous place on the licensed premises.

5. Any license granted shall state the maximum resident capacity for which granted, the person or persons to whom granted, the date, the expiration date, and such additional information and special limitations as the department by rule may require.

6. The department shall notify the operator at least sixty days prior to the expiration of an existing license of the date that the license application is due. Application for a license shall be made to the department at least thirty days prior to the expiration of any existing license.

7. The department shall grant an operator a temporary operating permit in order to allow for state review of the application and inspection for the purposes of relicensure if the application review and inspection process has not been completed prior to the expiration of a license and the operator is not at fault for the failure to complete the application review and inspection process.

8. The department shall grant an operator a temporary operating permit of sufficient duration to allow the department to evaluate any application for a license submitted as a result of any change of operator.

198.022. 1. Upon receipt of an application for a license to operate a facility, the department shall review the application, investigate the applicant and the statements sworn to in the application for license and conduct any necessary inspections. A license shall be issued if the following requirements are met:

- (1) The statements in the application are true and correct;
- (2) The facility and the operator are in substantial compliance with the provisions of sections 198.003 to 198.096 and the standards established thereunder;
- (3) The applicant has the financial capacity to operate the facility;
- (4) The administrator of a residential care facility II, a skilled nursing facility, or an intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;
- (5) Neither the operator nor any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a long-term health care facility or other health care facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory;
- (6) Neither the operator nor any principals involved in the operation of the facility have ever been convicted of a felony in any state or federal court arising out of conduct involving either management of a long-term care facility or the provision or receipt of health care;
- (7) All fees due to the state have been paid.

2. Upon denial of any application for a license, the department shall so notify the applicant in writing, setting forth therein the reasons and grounds for denial.

3. The department may inspect any facility and any records and may make copies of records, at the facility, at the department's own expense, required to be maintained by sections 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a license has been issued to or an application for a license has been filed by the operator of such facility. The department shall make at least [two inspections per year, at least one of which shall be unannounced to the operator] **one inspection per year, the date of which shall be unannounced to the operator. Should there be violations, other inspections shall be executed pursuant to section 198.026.** The department may make such other inspections, announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003 to 198.136.

4. Whenever the department has reasonable grounds to believe that a facility required to be licensed under sections 198.003 to 198.096 is operating without a license, and the department is not permitted access to inspect the facility, or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

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