

SECOND REGULAR SESSION

# SENATE BILL NO. 1051

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 30, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4700S.011

## AN ACT

To repeal sections 197.305 and 197.318, RSMo, and to enact in lieu thereof three new sections relating to certificate of need review for certain long-term care facilities.

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

Section A. Sections 197.305 and 197.318, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 197.305, 197.318,  
3 and 197.358, to read as follows:

197.305. As used in sections 197.300 to 197.366, the following terms  
2 mean:

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

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

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

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

16 (5) **"Certification letter", a letter from the department of health  
17 and senior services verifying that a project is a nonreviewable project;**

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

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

21           **[(6)] (7)** "Expenditure minimum" shall mean:

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

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

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

37           **[(7)] (8)** "Health care facilities", hospitals, health maintenance  
38 organizations, tuberculosis hospitals, psychiatric hospitals, intermediate care  
39 facilities, skilled nursing facilities, residential care facilities and assisted living  
40 facilities, kidney disease treatment centers, including freestanding hemodialysis  
41 units, diagnostic imaging centers, radiation therapy centers and ambulatory  
42 surgical facilities, but excluding the private offices of physicians, dentists and  
43 other practitioners of the healing arts, and Christian Science sanatoriums, also  
44 known as Christian Science Nursing facilities listed and certified by the  
45 Commission for Accreditation of Christian Science Nursing  
46 Organization/Facilities, Inc., and facilities of not-for-profit corporations in  
47 existence on October 1, 1980, subject either to the provisions and regulations of  
48 Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186 or the  
49 Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-538, and any  
50 residential care facility or assisted living facility operated by a religious  
51 organization qualified pursuant to Section 501(c)(3) of the federal Internal  
52 Revenue Code, as amended, which does not require the expenditure of public  
53 funds for purchase or operation, with a total licensed bed capacity of one hundred

54 beds or fewer;

55           [(8)] **(9)** "Health service area", a geographic region appropriate for the  
56 effective planning and development of health services, determined on the basis  
57 of factors including population and the availability of resources, consisting of a  
58 population of not less than five hundred thousand or more than three million;

59           [(9)] **(10)** "Major medical equipment", medical equipment used for the  
60 provision of medical and other health services;

61           [(10)] **(11)** "New institutional health service":

62           (a) The development of a new health care facility costing in excess of the  
63 applicable expenditure minimum;

64           (b) The acquisition, including acquisition by lease, of any health care  
65 facility, or major medical equipment costing in excess of the expenditure  
66 minimum;

67           (c) Any capital expenditure by or on behalf of a health care facility in  
68 excess of the expenditure minimum;

69           (d) Predevelopment activities as defined in subdivision (13) hereof costing  
70 in excess of one hundred fifty thousand dollars;

71           (e) Any change in licensed bed capacity of a health care facility which  
72 increases the total number of beds by more than ten or more than ten percent of  
73 total bed capacity, whichever is less, over a two-year period;

74           (f) Health services, excluding home health services, which are offered in  
75 a health care facility and which were not offered on a regular basis in such health  
76 care facility within the twelve-month period prior to the time such services would  
77 be offered;

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

82           **(12) "Nonreviewable project", a project that is exempt from the**  
83 **provisions of sections 197.300 to 197.366. Such project shall not require**  
84 **approval by the health facilities review committee;**

85           [(11)] **(13)** "Nonsubstantive projects", projects which do not involve the  
86 addition, replacement, modernization or conversion of beds or the provision of a  
87 new health service but which include a capital expenditure which exceeds the  
88 expenditure minimum and are due to an act of God or a normal consequence of  
89 maintaining health care services, facility or equipment;

90           [(12)] (14) "Person", any individual, trust, estate, partnership,  
91 corporation, including associations and joint stock companies, state or political  
92 subdivision or instrumentality thereof, including a municipal corporation;

93           [(13)] (15) "Predevelopment activities", expenditures for architectural  
94 designs, plans, working drawings and specifications, and any arrangement or  
95 commitment made for financing; but excluding submission of an application for  
96 a certificate of need.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65           c. A facility adding beds pursuant to subparagraphs a. or b. of this

66 paragraph shall not expand by more than fifty percent of its then licensed bed  
67 capacity in the qualifying licensure category;

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

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

75 (4) Any residential care facility **or assisted living facility** licensed  
76 pursuant to chapter 198, RSMo, may relocate any portion of such facility's current  
77 licensed beds to any other facility to be licensed within the same licensure  
78 category if both facilities are under the same licensure ownership or control, and  
79 are located within six miles of each other. **Such relocation shall be a**  
80 **nonreviewable project**;

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

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

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

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

98 (3) The existing facility and proposed facility shall have the same owner  
99 or owners, regardless of corporate or business structure, and such owner or  
100 owners shall stipulate in writing that the existing facility beds to be replaced will  
101 not later be used to provide long-term care services. If the facility is being

102 operated under a lease, both the lessee and the owner of the existing facility shall  
103 stipulate the same in writing.

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

197.358. 1. **The owner of any facility or beds may submit a**  
2 **written request prior to the start of any project to the department of**  
3 **health and senior services to verify its exemption from sections 197.300**  
4 **to 197.366.**

5       2. **Notwithstanding any other provision of this chapter, if the**  
6 **department determines such project is exempt from sections 197.300 to**  
7 **197.366, the department of health and senior services shall issue a**  
8 **certification letter to such owner. Such decision shall be considered**  
9 **final and subject to appeal under section 536.150, RSMo.**

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