

SECOND REGULAR SESSION

SENATE BILL NO. 640

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time January 11, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4404S.02I

AN ACT

To repeal sections 197.305, 197.310, 197.315, and 197.330, RSMo, and to enact in lieu thereof four new sections relating to certificate of need.

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

Section A. Sections 197.305, 197.310, 197.315, and 197.330, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 197.305, 197.310, 197.315, and 197.330, to read as follows:

197.305. As used in sections 197.300 to [197.366] **197.367**, the following
2 terms 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] **a five-mile radius of** the proposed new
6 health care service [is] to be 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] **197.367**;

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

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

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] **one**
23 **million** dollars in the case of capital expenditures, or [four hundred thousand]
24 **two million** dollars in the case of major medical equipment, provided, however,
25 that prior to January 1, 2003, the expenditure minimum for beds in such a
26 facility and long-term care beds in a hospital described in section 198.012 shall
27 be zero, subject to the provisions of 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 case
33 of capital expenditures, excluding major medical equipment, and one million
34 dollars in the case of medical equipment;

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

39 (8) "Major medical equipment", medical equipment used for the provision
40 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] **of**
50 **this section** costing in excess of one hundred fifty thousand dollars;

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

54 (f) Health services, excluding home health services, which are offered in

55 a health care facility and which were not offered on a regular basis in such health
56 care facility within the twelve-month period prior to the time such services would
57 be offered;

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

62 (10) "Nonsubstantive projects", projects which do not involve the addition,
63 replacement, modernization or conversion of beds or the provision of a new health
64 service but which include a capital expenditure which exceeds the expenditure
65 minimum and are due to an act of God or a normal consequence of maintaining
66 health care services, facility or equipment;

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

70 (12) "Predevelopment activities", expenditures for architectural designs,
71 plans, working drawings and specifications, and any arrangement or commitment
72 made for financing; but excluding submission of an application for a certificate
73 of need.

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

4 2. The committee shall be composed of:

5 (1) [Two members of the senate appointed by the president pro tem, who
6 shall be from different political parties] **One member who is professionally
7 qualified in health insurance plan sales and administration; [and]**

8 (2) [Two members of the house of representatives appointed by the
9 speaker, who shall be from different political parties] **One member who has
10 professionally qualified experience in commercial development,
11 financing, and lending; [and]**

12 (3) [Five members] **Two members with a doctorate of philosophy
13 in economics;**

14 (4) **Two members who are professionally qualified as medical
15 doctors or doctors of osteopathy, but who are not employees of a
16 hospital or consultants to a hospital;**

17 (5) **Two members who are professionally experienced in hospital**

18 **administration, but are not employed by a hospital or as consultants to**
19 **a hospital; and**

20 **(6) One member who is a registered nurse, but who is not an**
21 **employee of a hospital or a consultant to a hospital.**

22 **All members shall be** appointed by the governor with the advice and consent
23 of the senate, not more than [three] **five** of whom shall be from the same political
24 party. **All members shall serve four-year terms.**

25 3. No business of this committee shall be performed without a majority
26 of the full body.

27 4. [The members shall be appointed as soon as possible after September
28 28, 1979. One of the senate members, one of the house members and three of the
29 members appointed by the governor shall serve until January 1, 1981, and the
30 remaining members shall serve until January 1, 1982. All subsequent members
31 shall be appointed in the manner provided in subsection 2 of this section and
32 shall serve terms of two years.

33 5.] The committee shall elect a chairman at its first meeting which shall
34 be called by the governor. The committee shall meet upon the call of the
35 chairman or the governor.

36 [6.] 5. The committee shall review and approve or disapprove all
37 applications for a certificate of need made under sections 197.300 to [197.366]
38 **197.367**. It shall issue reasonable rules and regulations governing the
39 submission, review and disposition of applications.

40 [7.] 6. Members of the committee shall serve without compensation but
41 shall be reimbursed for necessary expenses incurred in the performance of their
42 duties.

43 [8.] 7. Notwithstanding the provisions of subsection 4 of section 610.025,
44 the proceedings and records of the facilities review committee shall be subject to
45 the provisions of chapter 610.

197.315. 1. Any person who proposes to develop or offer a new
2 institutional health service within the state must obtain a certificate of need from
3 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
7 offered or developed within the state. No expenditures for new institutional
8 health services in excess of the applicable expenditure minimum shall be made

9 by any 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 **197.367**, the committee shall notify the attorney general, and he **or she** shall
17 apply for an injunction or other appropriate legal action in any court of this state
18 against that 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] **197.367**.

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
31 completed. The committee may order the forfeiture of the certificate of need upon
32 failure of the applicant to file any such report.

33 9. A certificate of need shall be subject to forfeiture for failure to incur a
34 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] **shall** be accompanied
38 by an application fee. The time of filing commences with the receipt of the
39 application and the application fee. The application fee is one thousand dollars,
40 or one-tenth of one percent of the total cost of the proposed project, whichever is
41 greater. All application fees shall be deposited in the state treasury. Because of
42 the loss of federal funds, the general assembly will appropriate funds to the
43 Missouri health 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] **five-mile** radius from the applying
47 facility.

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

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

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

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

58 16. The provisions of this section shall not apply to facilities operated by
59 the state, and appropriation of funds to such facilities by the general assembly
60 shall be deemed in compliance with this section, and such facilities shall be
61 deemed to have received an appropriate certificate of need without payment of
62 any fee or charge.

63 17. Notwithstanding other provisions of this section, a certificate of need
64 may be issued after July 1, 1983, for an intermediate care facility operated
65 exclusively for the [mentally retarded] **intellectually disabled**.

66 18. To assure the safe, appropriate, and cost-effective transfer of new
67 medical technology throughout the state, a certificate of need shall not be
68 required for the purchase and operation of research equipment that is to be used
69 in a clinical trial that has received written approval from a duly constituted
70 institutional review board of an accredited school of medicine or osteopathy
71 located in Missouri to establish its safety and efficacy and does not increase the
72 bed complement of the institution in which the equipment is to be located. After
73 the clinical trial has been completed, a certificate of need must be obtained for
74 continued use in such facility.

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

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

33 **3. For all hearings held by the committee, including all public**
34 **hearings under subdivision (3) of subsection 1 of this section:**

35 **(1) All testimony and other evidence taken during such hearings**
36 **shall be under oath and subject to the penalty of perjury;**

37 **(2) The committee may, upon a majority vote of the committee,**
38 **subpoena witnesses, and compel the attendance of witnesses, the giving**
39 **of testimony, and the production of records;**

40 **(3) All ex parte communications between members of the**
41 **committee and any interested party or witness which are related to the**
42 **subject matter of a hearing shall be prohibited at any time prior to,**

43 **during, or after such hearing;**

44 **(4) The provisions of sections 105.452 to 105.458, regarding**
45 **conflict of interest shall apply;**

46 **(5) In all hearings, there shall be a rebuttable presumption of the**
47 **need for additional medical services and lower costs for such medical**
48 **services in the affected region or community. Any party opposing the**
49 **issuance of a certificate of need shall have the burden of proof to show**
50 **by clear and convincing evidence that no such need exists or that the**
51 **new facility will cause a substantial and continuing loss of medical**
52 **services within the affected region or community;**

53 **(6) All hearings before the committee shall be governed by rules**
54 **to be adopted and prescribed by the committee; except that, in all**
55 **inquiries or hearings, the committee shall not be bound by the**
56 **technical rules of evidence. No formality in any proceeding nor in the**
57 **manner of taking testimony before the committee shall invalidate any**
58 **decision made by the committee; and**

59 **(7) The committee shall have the authority, upon a majority vote**
60 **of the committee, to assess the costs of court reporting transcription or**
61 **the issuance of subpoenas to one or both of the parties to the**
62 **proceedings.**

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