

FIRST REGULAR SESSION

SENATE BILL NO. 194

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time January 23, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1035S.011

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, and 197.367, RSMo, and to enact in lieu thereof fifteen new sections relating to certificate of need for long-term care facilities, with existing penalty provisions.

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, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, and 197.367, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 197.300, 197.305, 197.310, 197.311, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, and 197.367, to read as follows:

197.300. Sections 197.300 to [197.366] **197.367** shall be known as the "Missouri **Long-term Care** Certificate of Need Law".

197.305. As used in sections 197.300 to [197.366] **197.367**, the following terms mean:

(1) "Affected persons", the person proposing the development of a new institutional [health] **long-term care** service, the public to be served, and [health] **long-term** care facilities within the service area in which the proposed new [health] **long-term** 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;

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

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] **long-term care** service or
18 the incurring of 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, the
25 expenditure minimum for beds in such a facility and long-term care beds in a
26 hospital described in section 198.012 shall be zero, subject to the provisions of
27 subsection 7 of section 197.318; **and**

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) **"Long-term care facility" or "facility":**

36 (a) **A facility licensed under chapter 198;**

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

39 (c) **A long-term care hospital or beds in a long-term care hospital**
40 **meeting the requirements described in 42 CFR, section 412.23(e);**

41 (8) **"[Health] Long-term care service area"**, a geographic region
42 appropriate for the effective planning and development of [health] **long-term**
43 **care** services, determined on the basis of factors including population and the
44 availability of resources, consisting of a population of not less than five hundred
45 thousand or more than three million;

46 [(8)] (9) **"Major medical equipment"**, medical equipment used for the
47 provision of medical and other health services;

48 [(9)] (10) "New institutional [health] **long-term care** service":

49 (a) The development of a new [health care] facility costing in excess of the
50 applicable expenditure minimum;

51 (b) The acquisition, including acquisition by lease, of any [health care]
52 facility, or major medical equipment costing in excess of the expenditure
53 minimum;

54 (c) Any capital expenditure by or on behalf of a [health care] facility in
55 excess of the expenditure minimum;

56 (d) Predevelopment activities as defined in subdivision (12) [hereof] **of**
57 **this section** costing in excess of one hundred fifty thousand dollars;

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

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

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

69 [(10)] (11) "Nonsubstantive projects", projects which do not involve the
70 addition, replacement, modernization or conversion of beds or the provision of a
71 new [health] **long-term care** service but which include a capital expenditure
72 which exceeds the expenditure minimum and are due to an act of God or a normal
73 consequence of maintaining [health] **long-term** care services, facility or
74 equipment;

75 [(11)] (12) "Person", any individual, trust, estate, partnership,
76 corporation, including associations and joint stock companies, state or political
77 subdivision or instrumentality thereof, including a municipal corporation;

78 [(12)] (13) "Predevelopment activities", expenditures for architectural
79 designs, plans, working drawings and specifications, and any arrangement or
80 commitment made for financing; but excluding submission of an application for
81 a certificate of need.

197.310. 1. The "Missouri [Health] **Long-term Care** Facilities Review
2 Committee" is hereby established. The agency shall provide clerical and

3 administrative support to the committee. The committee may employ additional
4 staff as it deems necessary.

5 2. The committee shall be composed of:

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

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

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

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

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

20 5. The committee shall elect a [chairman] **chair** at its first meeting which
21 shall be called by the governor. The committee shall meet upon the call of the
22 [chairman] **chair** 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] **197.367**. It
25 shall issue reasonable rules and regulations governing the submission, review
26 and 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.

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

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

4 2. Only those new institutional [health] **long-term care** services which
5 are found by the committee to be needed shall be granted a certificate of

6 need. Only those new institutional [health] **long-term care** services which are
7 granted certificates of need shall be offered or developed within the state. No
8 expenditures for new institutional health services in excess of the applicable
9 expenditure minimum shall be made by any person unless a certificate of need
10 has been granted.

11 3. After [October 1, 1980] **August 28, 2013**, no state agency charged by
12 statute to license or certify [health care] facilities shall issue a license to or
13 certify any such facility, or distinct part of such facility, that is developed without
14 obtaining a certificate of need.

15 4. If any person proposes to develop any new institutional [health] **long-**
16 **term** care service without a certificate of need as required by sections 197.300 to
17 [197.366] **197.367**, the committee shall notify the attorney general, and he **or**
18 **she** shall apply for an injunction or other appropriate legal action in any court
19 of this state against that person.

20 5. After [October 1, 1980] **August 28, 2013**, no agency of state
21 government may appropriate or grant funds to or make payment of any funds to
22 any person or [health care] facility which has not first obtained every certificate
23 of need required pursuant to sections 197.300 to [197.366] **197.367**.

24 6. A certificate of need shall be issued only for the premises and persons
25 named in the application and is not transferable except by consent of the
26 committee.

27 7. Project cost increases, due to changes in the project application as
28 approved or due to project change orders, exceeding the initial estimate by more
29 than ten percent shall not be incurred without consent of the committee.

30 8. Periodic reports to the committee shall be required of any applicant
31 who has been granted a certificate of need until the project has been
32 completed. The committee may order the forfeiture of the certificate of need upon
33 failure of the applicant to file any such report.

34 9. A certificate of need shall be subject to forfeiture for failure to incur a
35 capital expenditure on any approved project within six months after the date of
36 the order. The applicant may request an extension from the committee of not
37 more than six additional months based upon substantial expenditure made.

38 10. Each application for a certificate of need [must] **shall** be accompanied
39 by an application fee. The time of filing commences with the receipt of the
40 application and the application fee. The application fee is one thousand dollars,
41 or one-tenth of one percent of the total cost of the proposed project, whichever is

42 greater. All application fees shall be deposited in the state treasury. Because of
43 the loss of federal funds, the general assembly will appropriate funds to the
44 Missouri [health] **long-term care** facilities review committee.

45 11. In determining whether a certificate of need should be granted, no
46 consideration shall be given to the facilities or equipment of any other [health
47 care] facility located more than a fifteen-mile radius from the applying 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.

197.318. 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] **197.367** shall not be construed to apply
7 to litigation pending in state court on or before April 1, 1996, in which the
8 Missouri [health] **long-term care** facilities review committee is a defendant in
9 an action concerning the application of sections 197.300 to [197.366] **197.367** to
10 long-term care hospital beds meeting the requirements described in 42 CFR,
11 Section 412.23(e).

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

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

15 (a) Submitting a letter of intent to expand to the division of [aging]
16 **regulation and licensure** and the [health] **long-term care** facilities review
17 committee;

18 (b) Certification from the division of [aging] **regulation and licensure**
19 that the facility:

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

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

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

29 (d) If an agreement is reached by the selling and purchasing entities, the
30 [health] **long-term care** facilities review committee shall issue a certificate of
31 need for the expansion of the purchaser facility upon surrender of the seller's
32 license; or

33 (e) If no agreement is reached by the selling and purchasing entities, the
34 [health] **long-term care** facilities review committee shall permit an expansion
35 for:

36 a. A facility with more than forty beds may expand its licensed bed
37 capacity within the same licensure category by twenty-five percent or thirty beds,
38 whichever is greater, if that same licensure category in such facility has
39 experienced an average occupancy of ninety-three percent or greater over the

40 previous six quarters;

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

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

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

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

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

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

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

73 (1) The facility shall report to the division of [aging] **regulation and**
74 **licensure** vacant **long-term care** beds as unavailable for occupancy for at least
75 the most recent four consecutive calendar quarters;

76 (2) The replacement **long-term care** beds shall be built to private room
77 specifications and only used for single occupancy; and

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

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

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

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

11 2. A member of the general assembly who also serves as a member of the
12 [health] **long-term care** facilities review committee is prohibited from soliciting
13 or accepting campaign contributions from any applicant or person speaking for
14 an applicant or any opponent to any application or persons speaking for any
15 opponent while such application is pending before the [health] **long-term care**
16 facilities review committee.

17 3. Any person regulated by chapter 197 or 198 and any officer, attorney,
18 agent and employee thereof, shall not offer to any committee member or to any

19 person employed as staff to the committee, any office, appointment or position,
20 or any present, gift, entertainment or gratuity of any kind or any campaign
21 contribution while such application is pending before the [health] **long-term**
22 **care** facilities review committee. Any person guilty of knowingly violating the
23 provisions of this section shall be punished as follows: For the first offense, such
24 person is guilty of a class B misdemeanor; and for the second and subsequent
25 offenses, such person is guilty of a class D felony.

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] **long-term care** facilities
27 review committee the document or documents the applicant believes constitute
28 an application.

29 2. Failure by the committee to issue a written decision on an application

30 for a certificate of need within the time required by this section shall constitute
31 approval of and final administrative action on the application, and is subject to
32 appeal pursuant to section 197.335 only on the question of approval by operation
33 of law.

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

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

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

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

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

197.367. Upon application for renewal by any residential care facility or
2 assisted living facility which on [the effective date of this act] **August 28, 1999,**
3 has been licensed for more than five years, is licensed for more than fifty beds
4 and fails to maintain for any calendar year its occupancy level above thirty
5 percent of its then licensed beds, the division of [aging] **regulation and**
6 **licensure** shall license only fifty beds for such facility.

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

- 3 (1) Facilities licensed under chapter 198;
- 4 (2) Long-term care beds in a hospital as described in
5 subdivision (3) of subsection 1 of section 198.012;
- 6 (3) Long-term care hospitals or beds in a long-term care
7 hospital meeting the requirements described in 42 CFR, section
8 412.23(e); and
- 9 (4) Construction of a new hospital as defined in chapter
10 197.]

Bill ✓

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