

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2402

98TH GENERAL ASSEMBLY

Reported from the Committee on Veterans' Affairs and Health, May 4, 2016, with recommendation that the Senate Committee Substitute do pass.

5988S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 197.315 and 536.031, RSMo, and to enact in lieu thereof five new sections relating to the regulation of health care facilities, with an emergency clause for a certain section.

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

Section A. Sections 197.315 and 536.031, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 197.065, 197.315, 197.321, 197.322, and 536.031, to read as follows:

197.065. 1. The department of health and senior services shall promulgate regulations for the construction and renovation of hospitals that include life safety code standards for hospitals that exclusively reflect the life safety code standards imposed by the federal Medicare program under Title XVIII of the Social Security Act and its conditions of participation in the Code of Federal Regulations.

2. The department shall not require a hospital to meet the standards contained in the Facility Guidelines Institute for the Design and Construction of Health Care Facilities but any hospital that complies with the 2010 or later version of such guidelines for the construction and renovation of hospitals shall not be required to comply with any regulation that is inconsistent or conflicts in any way with such guidelines.

3. The department may waive enforcement of the standards for licensed hospitals imposed by this section if the department determines that:

(1) Compliance with those specific standards would result in

18 **unreasonable hardship for the facility and if the health and safety of**
19 **hospital patients would not be compromised by such waiver or waivers;**
20 **or**

21 **(2) The hospital has used other standards that provide for**
22 **equivalent design criteria.**

23 **4. Regulations promulgated by the department to establish and**
24 **enforce hospital licensure regulations under this chapter that conflict**
25 **with the standards established under subsections 1 and 3 of this section**
26 **shall lapse on and after January 1, 2018.**

27 **5. Any rule or portion of a rule, as that term is defined in section**
28 **536.010, that is created under the authority delegated in this section**
29 **shall become effective only if it complies with and is subject to all of**
30 **the provisions of chapter 536 and, if applicable, section 536.028. This**
31 **section and chapter 536 are nonseverable, and if any of the powers**
32 **vested with the general assembly pursuant to chapter 536 to review, to**
33 **delay the effective date, or to disapprove and annul a rule are**
34 **subsequently held unconstitutional, then the grant of rulemaking**
35 **authority and any rule proposed or adopted after August 28, 2016, shall**
36 **be invalid and void.**

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 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
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 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 ownership
53 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**
62 **hospitals operated by the state and licensed under chapter 197, except**
63 **for department of 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 its**
73 **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**
78 **operated by the state in furtherance of its research or teaching**
79 **missions.**

197.321. 1. For the purposes of this section, the following terms
2 **shall mean:**

3 **(1) "Affiliated", under common control or ownership;**

4 **(2) "Campus", a contiguous parcel or parcels of land used for a**
5 **common purpose;**

6 **(3) "Committee", the Missouri health facilities review committee;**

7 **(4) "Department", the department of health and senior services;**

8 **(5) "Facility", as defined in subdivision (11) of section 198.006.**

9 **2. Notwithstanding any provision of sections 197.300 to 197.367**
10 **to the contrary, there is hereby imposed a moratorium on the issuance**

11 of certificates of need by the committee for new or additional beds in
12 any facility on or after August 28, 2016, until December 31, 2019. No
13 new or additional beds in such facilities shall be licensed by the
14 department, except for those new or additional beds approved by the
15 committee under this section or pursuant to a certificate of need issued
16 by the committee prior to August 28, 2016, subject to the limitations of
17 subsection 4 of this section.

18 3. The moratorium shall not apply to:

19 (1) Bed additions, expansions, transfers, relocations, or
20 replacements as described in paragraphs (e) and (g) of subdivision (9)
21 of section 197.305 and section 197.318;

22 (2) Renovation, repair, or replacement of existing facilities and
23 beds located on a single campus, which does not result in an increase
24 in the number of beds licensed to the facility prior to the renovation,
25 repair, or replacement;

26 (3) Reallocation of licensed beds among licensed facilities with
27 common ownership and common or affiliated operators located on the
28 same campus, provided that the total number of licensed beds on the
29 campus does not increase;

30 (4) Construction of new or additional beds at any facility as
31 proposed in a letter of intent filed by an applicant on or before June 1,
32 2016; and

33 (5) Construction of new or additional beds at any facility for
34 which the applicant demonstrates that the average occupancy of all
35 facilities in the same category within fifteen miles of the project site
36 has been equal to or greater than eighty-five percent during the most
37 recent four quarters according to occupancy data published by the
38 committee.

39 4. For the duration of the moratorium imposed under this
40 section, the committee shall not approve any change in the owner or
41 operator, or grant a site change, except as provided herein, for a
42 certificate of need issued prior to the enactment of this section. The
43 committee may approve only one site change for any project, provided
44 that the new site shall not be located more than one-half mile from the
45 original site.

197.322. 1. There is hereby created within the department of
2 social services the "Missouri Task Force on Certificate of Need". The

3 task force shall be composed of the following eleven members:

4 (1) Two members of the senate from different political parties
5 and who are not members of the Missouri health facilities review
6 committee, appointed by the president pro tempore of the senate;

7 (2) Two members of the house of representatives from different
8 political parties and who are not members of the Missouri health
9 facilities review committee, appointed by the speaker of the house of
10 representatives;

11 (3) The director of the department of health and senior services,
12 or the director's designee;

13 (4) The director of the department of social services, or the
14 director's designee;

15 (5) One representative of an organization of operators of long-
16 term care facilities organized primarily as for-profit entities;

17 (6) One representative of an organization of operators of long-
18 term care facilities organized primarily as nonprofit or benevolent
19 entities;

20 (7) One representative of an organization of operators of assisted
21 living facilities and residential care facilities;

22 (8) One member who has expertise in lending to the long-term
23 care industry; and

24 (9) One member who is a certified public accountant with
25 expertise in reimbursement systems and in providing financial cost
26 reporting and related services to providers of long-term care services.
27 Members of the task force, other than the legislative members and
28 department directors, shall be appointed by the governor with the
29 advice and consent of the senate no later than December 31, 2016.

30 2. A majority of the task force membership shall constitute a
31 quorum and shall elect a chair and vice-chair of the task force.

32 3. A majority vote of a quorum of the task force is required for
33 any action.

34 4. The director of the department of social services, or his or her
35 designee, shall convene the initial meeting of the task force no later
36 than March 1, 2017. The task force shall meet at least every other
37 month. Meetings may be held by telephone or video conference at the
38 discretion of the chair.

39 5. Members shall serve on the task force without compensation

40 but may, subject to appropriations, be reimbursed for actual and
41 necessary expenses incurred in the performance of their official duties
42 as members of the task force. Subject to appropriations, the task force
43 may engage the services of a consulting firm with expertise in
44 consulting for providers of long-term care regarding quality and
45 efficiency of care. No consulting firm that has a direct or indirect
46 financial relationship with a member of the task force or his or her
47 family members shall be engaged by the task force.

48 6. The goal of the task force is to develop a comprehensive
49 proposal to reform Missouri's certificate of need law, sections 197.300
50 to 198.367, as applied to long-term care facilities.

51 7. No later than December 31, 2018, the task force shall:

52 (1) Review practices in other states regarding certificates of
53 need for long-term care facilities and consider how certificates of need
54 support or detract from quality of care, cost containment, reasonable
55 access, consumer choice, average occupancy, and public accountability;

56 (2) Review the current occupancy, utilization of long-term care
57 beds, and staffing in the state as compared to other states, and evaluate
58 the impact of certificate of need laws on such occupancy, utilization,
59 and staffing;

60 (3) Evaluate the relationship between the certificate of need laws
61 and MO HealthNet reimbursement rates on the long-term care
62 marketplace;

63 (4) Develop appropriate factors to determine need for new or
64 additional long-term care beds if necessary to support the findings and
65 recommendations of the task force; and

66 (5) Propose to the appropriate public and private organizations
67 goals, objectives, strategies, and tactics designed to end or improve the
68 certificate of need process.

69 8. On or before December 31, 2018, the task force shall submit a
70 report on its findings to the governor and general assembly. The report
71 shall include any dissenting opinions in addition to any majority
72 opinions.

73 9. The task force shall expire on January 1, 2019, or upon
74 submission of a report as provided for under subsection 8 of this
75 section, whichever is earlier.

536.031. 1. There is established a publication to be known as the "Code

2 of State Regulations", which shall be published in a format and medium as
3 prescribed and in writing upon request by the secretary of state as soon as
4 practicable after ninety days following January 1, 1976, and may be republished
5 from time to time thereafter as determined by the secretary of state.

6 2. The code of state regulations shall contain the full text of all rules of
7 state agencies in force and effect upon the effective date of the first publication
8 thereof, and effective September 1, 1990, it shall be revised no less frequently
9 than monthly thereafter so as to include all rules of state agencies subsequently
10 made, amended or rescinded. The code may also include citations, references, or
11 annotations, prepared by the state agency adopting the rule or by the secretary
12 of state, to any intraagency ruling, attorney general's opinion, determination,
13 decisions, order, or other action of the administrative hearing commission, or any
14 determination, decision, order, or other action of a court interpreting, applying,
15 discussing, distinguishing, or otherwise affecting any rule published in the code.

16 3. The code of state regulations shall be published in looseleaf form in one
17 or more volumes upon request and a format and medium as prescribed by the
18 secretary of state with an appropriate index, and revisions in the text and index
19 may be made by the secretary of state as necessary and provided in written
20 format upon request.

21 4. An agency may incorporate by reference rules, regulations, standards,
22 and guidelines of an agency of the United States or a nationally or
23 state-recognized organization or association without publishing the material in
24 full. The reference in the agency rules shall fully identify the incorporated
25 material by publisher, address, and date in order to specify how a copy of the
26 material may be obtained, and shall state that the referenced rule, regulation,
27 standard, or guideline does not include any later amendments or additions;
28 **except that, hospital licensure regulations governing life safety code**
29 **standards promulgated under this chapter and chapter 197 to**
30 **implement section 197.065 may incorporate, by reference, later**
31 **additions or amendments to such rules, regulations, standards, or**
32 **guidelines as needed to consistently apply current standards of safety**
33 **and practice.** The agency adopting a rule, regulation, standard, or guideline
34 under this section shall maintain a copy of the referenced rule, regulation,
35 standard, or guideline at the headquarters of the agency and shall make it
36 available to the public for inspection and copying at no more than the actual cost
37 of reproduction. The secretary of state may omit from the code of state

38 regulations such material incorporated by reference in any rule the publication
39 of which would be unduly cumbersome or expensive.

40 5. The courts of this state shall take judicial notice, without proof, of the
41 contents of the code of state regulations.

Section B. Because immediate action is necessary to preserve access to
2 quality health care facilities for the citizens of Missouri, the repeal and
3 reenactment of section 197.315 of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and the
6 repeal and reenactment of section 197.315 of this act shall be in full force and
7 effect upon its passage and approval.

✓

Bill

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