

# SENATE BILL NO. 727

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

4122S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 197.305, 197.315, 197.320, 197.366, and 354.095, RSMo, and to enact in lieu thereof four new sections relating to certificates of need.

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

Section A. Sections 197.305, 197.315, 197.320, 197.366,  
2 and 354.095, RSMo, are repealed and four new sections enacted  
3 in lieu thereof, to be known as sections 197.305, 197.315,  
4 197.320, and 354.095, to read as follows:

197.305. As used in sections 197.300 to [197.366]  
2 **197.367**, the following terms mean:

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

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

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

14 (4) "Certificate of need", a written certificate  
15 issued by the committee setting forth the committee's  
16 affirmative finding that a proposed project sufficiently

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

17 satisfies the criteria prescribed for such projects by  
18 sections 197.300 to [197.366] **197.367**;

19 **(5) "Committee", the Missouri health facilities review**  
20 **committee;**

21 **(6) "Department", the Missouri department of health**  
22 **and senior services;**

23 [(5)] **(7) "Develop",** to undertake those activities  
24 which on their completion will result in the offering of a  
25 new institutional health service or the incurring of a  
26 financial obligation in relation to the offering of such a  
27 service;

28 [(6)] **(8) "Expenditure minimum" shall mean:**

29 (a) For beds in existing or proposed health care  
30 facilities licensed pursuant to chapter 198 and long-term  
31 care beds in a hospital as described in subdivision (3) of  
32 subsection 1 of section 198.012, six hundred thousand  
33 dollars in the case of capital expenditures[, or four  
34 hundred thousand dollars in the case of major medical  
35 equipment,]; provided, [however,] that prior to January 1,  
36 2003, the expenditure minimum for beds in such a facility  
37 and long-term care beds in a hospital described in section  
38 198.012 shall be zero, subject to the provisions of  
39 subsection 7 of section 197.318;

40 (b) For beds [or equipment] in a long-term care  
41 hospital meeting the requirements described in 42 CFR[,  
42 Section] 412.23(e), the expenditure minimum shall be zero;  
43 and

44 (c) For health care facilities, new institutional  
45 health services or beds not described in paragraph (a) or  
46 (b) of this subdivision one million dollars in the case of  
47 capital expenditures[, excluding major medical equipment,  
48 and one million dollars in the case of medical equipment];

- 49           **(9) "Health care facilities":**
- 50           **(a) Facilities licensed under chapter 198;**
- 51           **(b) Long-term care beds in a hospital, as described in**  
52 **subdivision (3) of subsection 1 of section 198.012; and**
- 53           **(c) Long-term care hospitals or beds in a long-term**  
54 **care hospital meeting the requirements described in 42 CFR**  
55 **412.23(e);**
- 56           [(7)] **(10) "Health service area",** a geographic region  
57 appropriate for the effective planning and development of  
58 health services, determined on the basis of factors  
59 including population and the availability of resources,  
60 consisting of a population of not less than five hundred  
61 thousand or more than three million;
- 62           [(8) "Major medical equipment", medical equipment used  
63 for the provision of medical and other health services;
- 64           (9)] **(11) "New institutional health service":**
- 65           (a) The development of a new health care facility  
66 costing in excess of the applicable expenditure minimum;
- 67           (b) The acquisition, including acquisition by lease,  
68 of any health care facility[, or major medical equipment]  
69 costing in excess of the expenditure minimum;
- 70           (c) Any capital expenditure by or on behalf of a  
71 health care facility in excess of the expenditure minimum;
- 72           (d) Predevelopment activities [as defined in  
73 subdivision (12) hereof] costing in excess of one hundred  
74 fifty thousand dollars;
- 75           (e) Any change in licensed bed capacity of a health  
76 care facility licensed under chapter 198 which increases the  
77 total number of beds by more than ten or more than ten  
78 percent of total bed capacity, whichever is less, over a two-  
79 year period, provided that any such health care facility  
80 seeking a nonapplicability review for an increase in total

81 beds or total bed capacity in an amount less than described  
82 in this paragraph shall be eligible for such review only if  
83 the facility has had no patient care class I deficiencies  
84 within the last eighteen months and has maintained at least  
85 an eighty-five percent average occupancy rate for the  
86 previous six quarters;

87 (f) Health services, excluding home health services,  
88 which are offered in a health care facility and which were  
89 not offered on a regular basis in such health care facility  
90 within the twelve-month period prior to the time such  
91 services would be offered;

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

98 [(10)] (12) "Nonsubstantive projects", projects which  
99 do not involve the addition, replacement, modernization or  
100 conversion of beds or the provision of a new health service  
101 but which include a capital expenditure which exceeds the  
102 expenditure minimum and are due to an act of God or a normal  
103 consequence of maintaining health care services, facility or  
104 equipment;

105 [(11)] (13) "Person", any individual, trust, estate,  
106 partnership, corporation, including associations and joint  
107 stock companies, state or political subdivision or  
108 instrumentality thereof, including a municipal corporation;

109 [(12)] (14) "Predevelopment activities", expenditures  
110 for architectural designs, plans, working drawings and  
111 specifications, and any arrangement or commitment made for

112 financing; but excluding submission of an application for a  
113 certificate of need.

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

5 2. Only those new institutional health services which  
6 are found by the committee to be needed shall be granted a  
7 certificate of need. Only those new institutional health  
8 services which are granted certificates of need shall be  
9 offered or developed within the state. No expenditures for  
10 new institutional health services in excess of the  
11 applicable expenditure minimum shall be made by any person  
12 unless a certificate of need has been granted.

13 3. After October 1, 1980, no state agency charged by  
14 statute to license or certify health care facilities shall  
15 issue a license to or certify any such facility, or distinct  
16 part of such facility, that is developed without obtaining a  
17 certificate of need.

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

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

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

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

37           8. Periodic reports to the committee shall be required  
38 of any applicant who has been granted a certificate of need  
39 until the project has been completed. The committee may  
40 order the forfeiture of the certificate of need upon failure  
41 of the applicant to file any such report.

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

48           10. Each application for a certificate of need must be  
49 accompanied by an application fee. The time of filing  
50 commences with the receipt of the application and the  
51 application fee. The application fee is one thousand  
52 dollars, or one-tenth of one percent of the total cost of  
53 the proposed project, whichever is greater. All application  
54 fees shall be deposited in the state treasury. Because of  
55 the loss of federal funds, the general assembly will  
56 appropriate funds to the Missouri health facilities review  
57 committee.

58           11. In determining whether a certificate of need  
59 should be granted, no consideration shall be given to the  
60 facilities [or equipment] of any other health care facility

61 located more than a fifteen-mile radius from the applying  
62 facility.

63 12. When a [nursing] **long-term care** facility shifts  
64 from a skilled to an intermediate level of nursing care, it  
65 may return to the higher level of care if it meets the  
66 licensure requirements, without obtaining a certificate of  
67 need.

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

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

74 15. A certificate of need may be granted to a facility  
75 for an expansion, an addition of services, **or** a new  
76 institutional service[, or for a new hospital facility  
77 which] **that** provides for something less than that which was  
78 sought in the application.

79 16. The provisions of this section shall not apply to  
80 facilities operated by the state, and appropriation of funds  
81 to such facilities by the general assembly shall be deemed  
82 in compliance with this section, and such facilities shall  
83 be deemed to have received an appropriate certificate of  
84 need without payment of any fee or charge. The provisions  
85 of this subsection shall not apply to hospitals **offering**  
86 **long-term care services** operated by the state and licensed  
87 under this chapter, except for department of mental health  
88 state-operated psychiatric hospitals.

89 17. Notwithstanding other provisions of this section,  
90 a certificate of need may be issued after July 1, 1983, for  
91 an intermediate care facility operated exclusively for the  
92 intellectually disabled.

93 [18. To assure the safe, appropriate, and cost-  
94 effective transfer of new medical technology throughout the  
95 state, a certificate of need shall not be required for the  
96 purchase and operation of:

97 (1) Research equipment that is to be used in a  
98 clinical trial that has received written approval from a  
99 duly constituted institutional review board of an accredited  
100 school of medicine or osteopathy located in Missouri to  
101 establish its safety and efficacy and does not increase the  
102 bed complement of the institution in which the equipment is  
103 to be located. After the clinical trial has been completed,  
104 a certificate of need must be obtained for continued use in  
105 such facility; or

106 (2) Equipment that is to be used by an academic health  
107 center operated by the state in furtherance of its research  
108 or teaching missions.]

197.320. The committee shall have the power to  
2 promulgate reasonable rules, regulations, criteria and  
3 standards in conformity with this section and chapter 536 to  
4 meet the objectives of sections 197.300 to [197.366] **197.367**  
5 including the power to establish criteria and standards to  
6 review new types of [equipment or service] **services**. Any  
7 rule or portion of a rule, as that term is defined in  
8 section 536.010, that is created under the authority  
9 delegated in sections 197.300 to [197.366] **197.367** shall  
10 become effective only if it complies with and is subject to  
11 all of the provisions of chapter 536 and, if applicable,  
12 section 536.028. All rulemaking authority delegated prior to  
13 August 28, 1999, is of no force and effect and repealed.  
14 Nothing in this section shall be interpreted to repeal or  
15 affect the validity of any rule filed or adopted prior to  
16 August 28, 1999, if it fully complied with all applicable

17 provisions of law. This section and chapter 536 are  
18 nonseverable and if any of the powers vested with the  
19 general assembly pursuant to chapter 536 to review, to delay  
20 the effective date or to disapprove and annul a rule are  
21 subsequently held unconstitutional, then the grant of  
22 rulemaking authority and any rule proposed or adopted after  
23 August 28, 1999, shall be invalid and void.

354.095. 1. A corporation subject to the provisions  
2 of sections 354.010 to 354.380 may, in the discretion of its  
3 board of directors, limit or define the classes of persons  
4 who shall be eligible to become members or beneficiaries,  
5 limit and define the benefits which it will furnish, and may  
6 define such benefits as it undertakes to furnish into  
7 classes or kinds. It may make available to its members or  
8 beneficiaries such health services, or reimbursement  
9 therefor, as the board of directors of any such corporation  
10 may approve; if maternity benefits are provided to any  
11 members of any plan, then maternity benefits shall be  
12 provided to any member of such plan without discrimination  
13 as to whether the member is married or unmarried, and if  
14 maternity benefits are provided to a beneficiary of any  
15 plan, then maternity benefits shall be provided to such  
16 beneficiary of such plan without discrimination as to  
17 whether the beneficiary is married or unmarried.

18 2. [If an ambulatory surgical facility as defined by  
19 subdivision (2) of section 197.200, has received a  
20 certificate of need as provided in chapter 197,] A health  
21 services corporation shall provide benefits to [the  
22 facility] **an ambulatory surgical center, as defined by**  
23 **section 197.200**, on the same basis as it does to all other  
24 health care facilities, whether contracting members or  
25 noncontracting members. A health services corporation shall

26 use the same standards that are applied to any other health  
27 care facility within the same health services area in  
28 defining the benefits that the corporation will furnish to  
29 the ambulatory surgical facility, the classes to which such  
30 benefits will be furnished, and the amount of reimbursement.

2 [197.366. The term "health care  
3 facilities" in sections 197.300 to 197.366 shall  
4 mean:  
5 (1) Facilities licensed under chapter 198;  
6 (2) Long-term care beds in a hospital as  
7 described in subdivision (3) of subsection 1 of  
8 section 198.012;  
9 (3) Long-term care hospitals or beds in a  
10 long-term care hospital meeting the requirements  
11 described in 42 CFR, section 412.23(e); and  
12 (4) Construction of a new hospital as  
defined in chapter 197.]

✓