

SENATE BILL NO. 1268

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOON.

5411S.011

KRISTINA MARTIN, 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2 and 354.095, RSMo, are repealed and four new sections enacted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 (7) "Develop", to undertake those activities which on
24 their completion will result in the offering of a new
25 institutional health service or the incurring of a financial
26 obligation in relation to the offering of such a service;

27 [(6)] (8) "Expenditure minimum" shall mean:

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

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

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

48 (9) "Health care facilities":

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

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

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

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

97 [(10)] (12) "Nonsubstantive projects", projects which
98 do not involve the addition, replacement, modernization or
99 conversion of beds or the provision of a new health service
100 but which include a capital expenditure which exceeds the
101 expenditure minimum and are due to an act of God or a normal
102 consequence of maintaining health care services, facility or
103 equipment;

104 [(11)] (13) "Person", any individual, trust, estate,
105 partnership, corporation, including associations and joint
106 stock companies, state or political subdivision or
107 instrumentality thereof, including a municipal corporation;

108 [(12)] (14) "Predevelopment activities", expenditures
109 for architectural designs, plans, working drawings and
110 specifications, and any arrangement or commitment made for
111 financing; but excluding submission of an application for a
112 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.

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

4 (1) Facilities licensed under chapter 198;

5 (2) Long-term care beds in a hospital as
6 described in subdivision (3) of subsection 1 of
7 section 198.012;

8 (3) Long-term care hospitals or beds in a
9 long-term care hospital meeting the requirements
10 described in 42 CFR, section 412.23(e); and

11 (4) Construction of a new hospital as
12 defined in chapter 197.]

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