

# SENATE BILL NO. 1794

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WEBBER.

7211S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 197.315 and 198.022, RSMo, and to enact in lieu thereof three new sections relating to long-term care facilities.

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

Section A. Sections 197.315 and 198.022, RSMo, are  
2 repealed and three new sections enacted in lieu thereof, to be  
3 known as sections 197.315, 198.022, and 198.043, to read as  
4 follows:

197.315. 1. Any person who proposes to develop or  
2 offer a new institutional health service within the state  
3 must obtain a certificate of need from the committee prior  
4 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

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

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, the  
21 committee shall notify the attorney general, and he shall  
22 apply for an injunction or other appropriate legal action in  
23 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.

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 facility shifts from a skilled to  
64 an intermediate level of nursing care, it may return to the  
65 higher level of care if it meets the licensure requirements,  
66 without obtaining a certificate of need.

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

70           14. A certificate of need shall not be required for  
71 the transfer of ownership of an existing and operational  
72 health facility in its entirety, **except for any assisted**  
73 **living facility, intermediate care facility, residential**  
74 **care facility, or skilled nursing facility, as such terms**  
75 **are defined in section 198.006.**

76           15. A certificate of need may be granted to a facility  
77 for an expansion, an addition of services, a new  
78 institutional service, or for a new hospital facility which

79 provides for something less than that which was sought in  
80 the application.

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

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

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

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

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

198.022. 1. Upon receipt of an application for a  
2 license to operate a facility, the department shall review  
3 the application, investigate the applicant and the  
4 statements sworn to in the application for license and  
5 conduct any necessary inspections. A license shall be  
6 issued if the following requirements are met:

7 (1) **The application discloses all facility owners,**  
8 **facility trustees, and companies that provide the facility**  
9 **or operator with administrative, clinical, and financial**  
10 **services, including real estate investment trusts;**

11 (2) The statements in the application are true and  
12 correct;

13 [(2)] (3) The facility and the operator are in  
14 substantial compliance with the provisions of sections  
15 198.003 to 198.096 and the standards established thereunder;

16 [(3)] (4) The applicant has the financial capacity to  
17 operate the facility;

18 [(4)] (5) The administrator of an assisted living  
19 facility, a skilled nursing facility, or an intermediate  
20 care facility is currently licensed under the provisions of  
21 chapter 344;

22 [(5)] (6) Neither the operator nor any principals in  
23 the operation of the facility have ever been convicted of a  
24 felony offense concerning the operation of a long-term  
25 health care facility or other health care facility or ever  
26 knowingly acted or knowingly failed to perform any duty  
27 which materially and adversely affected the health, safety,  
28 welfare or property of a resident, while acting in a  
29 management capacity. The operator of the facility or any  
30 principal in the operation of the facility shall not be  
31 under exclusion from participation in the Title XVIII

32 (Medicare) or Title XIX (Medicaid) program of any state or  
33 territory;

34 [(6)] (7) Neither the operator nor any principals  
35 involved in the operation of the facility have ever been  
36 convicted of a felony in any state or federal court arising  
37 out of conduct involving either management of a long-term  
38 care facility or the provision or receipt of health care; **and**

39 [(7)] (8) All fees due to the state have been paid.

40 2. Upon denial of any application for a license, the  
41 department shall so notify the applicant in writing, setting  
42 forth therein the reasons and grounds for denial.

43 3. The department may inspect any facility and any  
44 records and may make copies of records, at the facility, at  
45 the department's own expense, required to be maintained by  
46 sections 198.003 to 198.096 or by the rules and regulations  
47 promulgated thereunder at any time if a license has been  
48 issued to or an application for a license has been filed by  
49 the operator of such facility. Copies of any records  
50 requested by the department shall be prepared by the staff  
51 of such facility within two business days or as determined  
52 by the department. The department shall not remove or  
53 disassemble any medical record during any inspection of the  
54 facility, but may observe the photocopying or may make its  
55 own copies if the facility does not have the technology to  
56 make the copies. In accordance with the provisions of  
57 section 198.525, the department shall make at least one  
58 inspection per year, which shall be unannounced to the  
59 operator. The department may make such other inspections,  
60 announced or unannounced, as it deems necessary to carry out  
61 the provisions of sections 198.003 to 198.136.

62 4. Whenever the department has reasonable grounds to  
63 believe that a facility required to be licensed under

64 sections 198.003 to 198.096 is operating without a license,  
65 and the department is not permitted access to inspect the  
66 facility, or when a licensed operator refuses to permit  
67 access to the department to inspect the facility, the  
68 department shall apply to the circuit court of the county in  
69 which the premises is located for an order authorizing entry  
70 for such inspection, and the court shall issue the order if  
71 it finds reasonable grounds for inspection or if it finds  
72 that a licensed operator has refused to permit the  
73 department access to inspect the facility.

74 5. Whenever the department is inspecting a facility in  
75 response to an application from an operator located outside  
76 of Missouri not previously licensed by the department, the  
77 department may request from the applicant the past five  
78 years compliance history of all facilities owned by the  
79 applicant located outside of this state.

**198.043. 1. As used in this section, the following  
2 terms mean:**

3 (1) "Certified nursing assistant", the same meaning  
4 given to the term in section 198.082;

5 (2) "Charge nurse", a registered professional nurse  
6 who oversees the operations of the nurse's specific nursing  
7 unit during a set period;

8 (3) "CMS", the Centers for Medicare and Medicaid  
9 Services;

10 (4) "Hours per resident day", the total number of  
11 hours worked by each type of staff divided by the total  
12 number of residents;

13 (5) "Registered professional nurse" or "registered  
14 nurse", the same meanings given to the terms in section  
15 335.016.

16           2. Assisted living facilities shall have sufficient  
17 nursing staff with the appropriate competencies and skill  
18 sets to provide nursing and related services to ensure  
19 resident safety and attain or maintain the highest  
20 practicable physical, mental, and psychosocial well-being of  
21 each resident by maintaining on a twenty-four-hour basis the  
22 following types of personnel:

23           (1) Registered nurses. Each assisted living facility  
24 shall comply with the following staffing requirements for  
25 registered nurses:

26           (a) Each assisted living facility shall provide care  
27 by registered nurses for a minimum of fifty-five hundredths  
28 hours per resident day; and

29           (b) At least one registered nurse shall be on site  
30 twenty-four hours a day, seven days a week; and

31           (2) Other nursing personnel. Each assisted living  
32 facility shall provide care by certified nursing assistants  
33 for a minimum of two and forty-four hundredths hours per  
34 resident day.

35           3. Assisted living facilities shall electronically  
36 submit to CMS complete and accurate direct care staffing  
37 information, including information for agency and contract  
38 staff, based on payroll and other verifiable and auditable  
39 data in a uniform format according to specifications  
40 established by CMS in accordance with 42 CFR 483.70(p).

41           4. Determinations of compliance with hours per  
42 resident day specified in subsection 2 of this section shall  
43 be made by the department based on the most recent available  
44 quarter of Payroll-Based Journal System data maintained by  
45 CMS.

46           5. The department may impose appropriate sanctions and  
47 assess an administrative penalty under this section on an

48 administrator of a facility who fails to meet the minimum  
49 staffing standards two quarters in a row as determined by  
50 rule.

51 6. (1) An assisted living facility may be exempted  
52 from the minimum staffing requirements of subdivisions (1)  
53 and (2) of subsection 2 of this section by the department if  
54 a verifiable hardship exists that prohibits the facility  
55 from achieving or maintaining compliance as demonstrated by  
56 meeting the following criteria:

57 (a) The facility is located in an area where:

58 a. The supply of applicable health care staff, either  
59 registered professional nurses or certified nursing  
60 assistants or both, is not sufficient to meet area needs as  
61 evidenced by a provider-population ratio for nursing  
62 workforce that is medium, twenty percent below the national  
63 average, or low, forty percent below the national average;  
64 and

65 b. The facility is at least twenty miles from another  
66 assisted living facility;

67 (b) The facility demonstrates that it has been unable,  
68 despite diligent efforts, including offering at least  
69 prevailing wages, to recruit and retain appropriate  
70 personnel as verified by:

71 a. Job listings in commonly used recruitment forums  
72 found online at American Job Centers, coordinated by the  
73 U.S. Department of Labor's Employment and Training  
74 Administration; MoJobs, coordinated by the department of  
75 higher education and workforce development; and other forums  
76 as appropriate;

77 b. Documented job vacancies, including the number and  
78 duration of the vacancies and documentation of offers made,  
79 including that they were made at least at prevailing wages;

80 c. Data on the average wages in the metropolitan  
81 statistical area in which the facility is located and  
82 vacancies by industry as reported by the department of labor  
83 and industrial relations; and

84 d. The facility's staffing plan, which shall be  
85 developed and maintained to maximize recruitment and  
86 retention of direct care staff; and

87 (c) The facility demonstrates through documentation  
88 the amount of financial resources that the facility expends  
89 on nurse staffing relative to revenue.

90 (2) A facility shall not be eligible for a hardship  
91 waiver from the minimum staffing requirements if the  
92 facility:

93 (a) Has been cited within the twelve months preceding  
94 the survey during which the facility's noncompliance is  
95 identified:

96 a. For having widespread insufficient staffing with  
97 resultant resident actual harm;

98 b. For a pattern of insufficient staffing with  
99 resultant resident actual harm; or

100 c. As at the immediate jeopardy level of severity with  
101 respect to insufficient staffing as determined by CMS; or

102 (b) Has failed to submit data to CMS under subsection  
103 3 of this section.

104 7. In order to appropriately manage required nursing  
105 staff, an assisted living facility shall:

106 (1) Designate a registered professional nurse as the  
107 director of nursing on a full-time basis; and

108 (2) Designate a registered professional nurse to serve  
109 as a charge nurse for each nursing shift. The director of  
110 nursing designated in subdivision (1) of this subsection may

111 serve as a charge nurse only if the facility has an average  
112 daily occupancy of sixty or fewer residents.

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