

FIRST REGULAR SESSION

SENATE BILL NO. 453

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIGGINS.

Read 1st time February 15, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

L1838.011

AN ACT

To repeal sections 197.310, 197.311, 197.315, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357 and 197.360, RSMo 1994, and sections 197.305, 197.312, 197.313, 197.316, 197.320 and 197.366, RSMo Supp. 1998, relating to certificate of need, and to enact in lieu thereof seventeen new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 197.310, 197.311, 197.315, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357 and 197.360, RSMo 1994, and sections 197.305, 197.312, 197.313, 197.316, 197.320 and 197.366, RSMo Supp. 1998, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 197.305, 197.310, 197.311, 197.315, 197.316, 197.320, 197.325, 197.326, 197.327, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.360 and 197.366, to read as follows:

197.305. As used in sections 197.300 to 197.366, the following terms mean:

(1) "Affected persons", the person proposing the development of a new health care service, the public to be served, the health systems agency and health care facilities within the service area in which the proposed new health care service is to be developed;

(2) "Agency", the [state health planning and development agency of the Missouri department of health] **certificate of need program of the Missouri health services review committee;**

(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

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

operation and maintenance;

(4)] "Certificate of need", a written certificate issued by the committee setting forth the committee's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by sections 197.300 to 197.366;

[(5)] (4) "Continuing care retirement community", a continuing care retirement community provides at the same site or location independent housing, long-term health care and other services to older persons not related by blood or marriage to the owner or operator of the continuing care retirement community under an agreement effective for the life of the person or a specified period of time in excess of one year which guarantees or provides priority access to on-site health-related long-term care services when needed;

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

[(7)] "Expenditure minimum" shall mean:

(a) For beds in existing or proposed health care facilities licensed pursuant to chapter 198, RSMo, and long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo, six hundred thousand dollars in the case of capital expenditures, or four hundred thousand dollars in the case of major medical equipment, provided, however, that prior to December 31, 1999, the expenditure minimum for beds in such a facility and long-term care beds in a hospital described in section 198.012, RSMo, shall be zero, subject to the provisions of subsection 7 of section 197.318;

(b) For beds or equipment in a long-term care hospital meeting the requirements described in 42 C.F.R., Section 412.23(e), the expenditure minimum shall be zero; and

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

(8)] (6) "Health [care facilities] **services**", **new or additional units or services, such as medical equipment, operating rooms or beds, including magnetic resonance imaging, positron emission tomography, radiation therapy, proton therapy, lithotripsy, cardiac catheterization, open heart surgery, general surgery, including freestanding ambulatory surgery, gamma knife and emerging technology, regardless of setting, as well as new beds in** hospitals, [health maintenance organizations, tuberculosis hospitals, psychiatric hospitals,] intermediate care facilities, skilled nursing facilities, residential care facilities I and II[, kidney disease treatment centers, including freestanding hemodialysis units, diagnostic imaging centers, radiation therapy centers and ambulatory surgical facilities, but excluding the private offices of physicians, dentists and other practitioners of the healing arts, and Christian Science sanatoriums, also known as Christian Science Nursing facilities listed and

certified by the Commission for Accreditation of Christian Science Nursing Organization/Facilities, Inc., and facilities of not for profit corporations in existence on October 1, 1980, subject either to the provisions and regulations of Section 302 of the Labor-Management Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-538, and any residential care facility I or residential care facility II operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue Code, as amended, which does not require the expenditure of public funds for purchase or operation, with a total licensed bed capacity of one hundred beds or fewer];

[(9)] (7) "Health service area", a geographic region appropriate for the effective planning and development of health services, determined on the basis of factors including population and the availability of resources, consisting of a population of not less than five hundred thousand or more than three million;

[(10)] (8) "Health systems agency", a regional health planning agency established pursuant to P.L. 93-641 and, after December 31, 1981, in accordance with Section 1512(b)(1)(B) thereof;

[(11)] "Major medical equipment", medical equipment used for the provision of medical and other health services;

(12)] (9) "New [institutional] health service":

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

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

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

(d) Predevelopment activities as defined in subdivision (15) hereof costing in excess of one hundred fifty thousand dollars;

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

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

(g) A reallocation by an existing health care facility of licensed beds among major types of service or reallocation of licensed beds from one physical facility or site to another by more than ten beds or more than ten percent of total licensed bed capacity, whichever is less, over a two-year period] **unit or service, such as operating rooms or beds, which has not been offered on a regular basis at such location within the twelve-month period prior to the time such**

services would be offered regardless of cost;

(b) The expansion of additional units or services, such as medical equipment, operating rooms or beds of an existing health service regardless of cost;

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

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

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

(12) "Reviewability determination", a decision by or on behalf of the Missouri health services review committee as to whether a project requires a full certification of need review in accordance with sections 197.300 to 197.366.

197.310. 1. The "Missouri Health [Facilities] **Services** Review Committee" is hereby established. The agency shall provide clerical and administrative support to the committee. The committee may employ additional staff as it deems necessary.

2. The committee shall be composed of:

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

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

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

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

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

5. The committee shall elect a chairman at its first meeting which shall be called by the governor. The committee shall meet upon the call of the chairman or the governor.

6. The committee shall review and approve or disapprove all applications for a certificate of need made [under] **pursuant to** sections 197.300 to 197.365. It shall issue reasonable rules and regulations governing the submission, review and disposition of applications.

7. Members of the committee shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

8. Notwithstanding the provisions of subsection 4 of section 610.025, RSMo, the proceedings and records of the [facilities] **services** review committee shall be subject to the provisions of chapter 610, RSMo.

197.311. No member of the Missouri health [facilities] **services** review committee may accept a political donation from any applicant for a [license] **certificate of need**.

[197.312. A certificate of need shall not be required for any institution previously owned and operated for or in behalf of a city not within a county which chooses to be licensed as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, for a facility of ninety beds or less that is owned or operated by a not for profit corporation which is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which has received approval by the division of aging of plans for construction of such facility by August 1, 1995, and is licensed by the division of aging by July 1, 1996, as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, or for a facility, serving exclusively mentally ill, homeless persons, of sixteen beds or less that is owned or operated by a not for profit corporation which is exempt from federal income tax which is described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which has received approval by the division of aging of plans for construction of such facility by May 1, 1996, and is licensed by the division of aging by July 1, 1996, as a facility defined under subdivision (15) or (16) of section 198.006, RSMo, or a residential care facility II located in a city not within a county operated by a not for profit corporation which is exempt from federal income tax which is described in section 501(c)(3) of the Internal Revenue Code of 1986, which is controlled directly by a religious organization and which is licensed for one hundred beds or less on or before August 28, 1997.]

[197.313. A continuing care retirement community, skilled nursing facility or residential care facility I or II may increase its licensed bed capacity by the lesser of ten beds or ten percent only once during the two-year period beginning on July 12, 1996, and ending on July 11, 1998. A facility's increase in beds pursuant to this section shall only be within the same licensure category. Any health care facility which has received a nonapplicability certificate of need letter by July 11, 1998, shall be allowed until December 31, 1998, to complete and license the beds allowed by this exception.]

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

2. Only those new [institutional] health services which are found by the committee to be needed shall be granted a certificate of need. Only those new [institutional] health services which are granted certificates of need shall be offered or developed within the state. No expenditures for new [institutional] health services [in excess of the expenditure minimum] shall be made by any person unless a certificate of need has been granted.

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

4. If any person proposes to develop any new [institutional] health care service without a certificate of need as required by sections 197.300 to 197.365, the committee shall notify the attorney general, and [he] **the attorney general** shall apply for an injunction or other appropriate legal action in any court of this state against that person.

5. After October 1, 1980, no agency of state government may appropriate or grant funds to or make payment of any funds to any person or health [care facility] **service** which has not first obtained every certificate of need required [under] **pursuant to** sections 197.300 to 197.365.

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

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

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

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

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

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

12. When a nursing facility shifts from a professional to a practical level of nursing care,

it may return to the higher level of care if it meets the licensure requirements, without obtaining a certificate of need.

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

14. A certificate of need shall not be required for the transfer of ownership of an existing and operational health [facility] **service** in its entirety.

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

16. The provisions of this section shall not apply to [facilities] **health services** operated by the state, and appropriation of funds [to] **for such [facilities] health services** by the general assembly shall be deemed in compliance with this section, and such [facilities] **health services** shall be deemed to have received an appropriate certificate of need without payment of any fee or charge.

17. [Notwithstanding other provisions of this section, a certificate of need may be issued after July 1, 1983, for an intermediate care facility operated exclusively for the mentally retarded.

18.] To assure the safe, appropriate, and cost-effective transfer of new medical technology throughout the state, a certificate of need shall not be required for the purchase and operation of research equipment that is to be used in a clinical trial that has received written approval from a duly constituted institutional review board of an accredited school of medicine or osteopathy located in Missouri to establish its safety and efficacy and does not increase the bed complement of the institution in which the equipment is to be located. After the clinical trial has been completed, a certificate of need must be obtained for continued use [in such facility].

197.316. 1. The provisions of subsection 10 of section 197.315 and sections 197.317 and 197.318 shall not apply to [facilities] **health services** which are licensed pursuant to the provisions of chapter 198, RSMo, which are designed and operated exclusively for the care and treatment of persons with acquired human immunodeficiency syndrome, AIDS.

2. If a [facility] **health service** is granted a certificate of need and is found to be exempt from the provisions of subsection 10 of section 197.315 and sections 197.317 and 197.318 pursuant to the provisions of subsection 1 of this section, then only AIDS patients shall be residents of such [facility] **health service** and no others.

3. Any [facility] **health service** that violates the provisions of subsection 2 of this section shall be liable for a fine of one hundred dollars per resident per day for each such violation.

4. The attorney general shall, upon request of the [department of health] **Missouri health services review committee**, bring an action in a circuit court of competent jurisdiction for violation of this section and section 197.312.

197.320. The committee shall have the power to promulgate reasonable rules, regulations,

criteria and standards in conformity with this section and chapter 536, RSMo, to meet the objectives of sections 197.300 to [197.365] **197.366**, including the power to establish criteria and standards to review new types of equipment or service. No rule or portion of a rule promulgated [under] **pursuant to** the authority of sections 197.300 to [197.365] **197.366** shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

197.325. 1. Any person who proposes to develop or offer a new [institutional] health service shall submit a letter of intent **describing the proposal** to the appropriate health systems agency and the committee at least thirty days prior to the filing of the application **for such proposal**.

2. Applicants for a certificate of need shall simultaneously submit their request to the health systems agency serving the area in which the new [institutional] health service is to be developed and the committee.

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

2. A member of the general assembly who also serves as a member of the health [facilities] **services** review committee is prohibited from soliciting or accepting campaign contributions from any applicant or person speaking for an applicant or any opponent to any application or persons speaking for any opponent while such application is pending before the health [facilities] **services** review committee.

3. Any person regulated by chapter 197 or 198, RSMo, and any officer, attorney, agent and employee thereof, shall not offer to any committee member or to any person employed as staff to the committee, any office, appointment or position, or any present, gift, entertainment or gratuity of any kind or any campaign contribution while such application is pending before the health [facilities] **services** review committee. Any person guilty of knowingly violating the provisions of this section shall be punished as follows: For the first offense, such person is guilty of a class B misdemeanor; and for the second and subsequent offenses, such person is guilty of a class D felony.

197.327. 1. If a [facility] **health service** is granted a certificate of need pursuant to sections 197.300 to 197.365 based on an application stating a need for additional medicaid beds, such beds shall be used for medicaid patients and no other.

2. Any person who violates the provisions of subsection 1 of this section shall be liable to the state for civil penalties of one hundred dollars for every day of such violation. Each nonmedicaid patient placed in a medicaid bed shall constitute a separate violation.

3. The attorney general shall, upon the request of the department, bring an action in a circuit court of competent jurisdiction to recover the civil penalty. The department may bring such an action itself. The civil action may be brought in the circuit court of Cole County or, at the option of the director, in another county which has venue of an action against the person **[under]** **pursuant to** other provisions of law.

197.330. 1. The committee shall:

(1) Notify the applicant within fifteen days of the date of filing of an application as to the completeness of such application;

(2) Provide written notification to affected persons and contiguous health systems agencies located within this state at the beginning of a review. This notification may be given through publication of the review schedule in all newspapers of general circulation in the area to be served;

(3) Hold public hearings on all applications when a request in writing is filed by any affected person within thirty days from the date of publication of the notification of review;

(4) Consider recommendations submitted by the appropriate health systems agency, provided such recommendations are documented and based on published criteria, plans and standards adopted by the health systems agency;

(5) Within one hundred days of the filing of any application for a certificate of need, issue in writing its findings of fact, conclusions of law, and its approval or denial of the certificate of need; provided, that the committee may grant an extension of not more than thirty days on its own initiative or upon the written request of any affected person;

(6) Cause to be served upon the applicant, the respective health system agency, and any affected person who has filed his prior request in writing, a copy of the aforesaid findings, conclusions and decisions;

(7) Consider the needs and circumstances of institutions providing training programs for health personnel;

(8) Provide for the availability, based on demonstrated need, of both medical and osteopathic facilities and services to protect the freedom of patient choice; and

(9) Establish by regulation procedures to review, or grant a waiver from review, nonsubstantive projects.

The term "filed" or "filing" as used in this section shall mean delivery to the staff of the health **[facilities]** **services** review committee the document or documents the applicant believes constitute an application.

2. Failure by the committee to issue a written decision on an application for a certificate of need within the time required by this section shall constitute approval of and final

administrative action on the application, and is subject to appeal [under] **pursuant to** section 197.335 only on the question of approval by operation of law.

197.335. Within thirty days of the decision of the committee, the applicant or the health systems agency within whose area the new [institutional] health service is to be offered may file an appeal in accordance with the provisions of sections 621.015 to 621.198, RSMo, and chapter 536, RSMo, provided, that venue of any appeal from the administrative hearing commission to the circuit court shall be in the county within which such health [care] service or facility is proposed to be developed.

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

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

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

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

197.360. No provisions of sections 197.300 to 197.365 shall apply to gifts and grants, for [facilities and equipment] **health services** that do not require the expenditure of public funds for purchase or operation.

197.366. The provisions of subdivision (8) of section 197.305 to the contrary notwithstanding, after December 31, 2001, the term "health [care facilities] **services**" in sections 197.300 to 197.366 shall mean:

- (1) Facilities **and services** licensed [under] **pursuant to** chapter 198, RSMo;
- (2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of section 198.012, RSMo;
- (3) Long-term care hospitals or beds in a long-term care hospital meeting the requirements described in 42 C.F.R., section 412.23(e); and
- (4) Construction of a new hospital as defined in chapter 197.

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