

SECOND REGULAR SESSION

HOUSE BILL NO. 1806

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAAF (Sponsor), McGHEE, ONDER, PAGE,
HUNTER AND ERVIN (Co-sponsors).

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D. ADAM CRUMBLISS, Chief Clerk

4349L.01I

AN ACT

To repeal sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.345, 197.355, 197.357,
and 197.366, RSMo, and to enact in lieu thereof eight new sections relating to certificate
of need.

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

Section A. Sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.345, 197.355,
2 197.357, and 197.366, RSMo, are repealed and eight new sections enacted in lieu thereof, to be
3 known as sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.355, 197.357, and 197.366,
4 to read as follows:

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

- 2 (1) "Affected persons", the person proposing the development of a new institutional
3 **[health] long-term care** service, the public to be served, and **[health] long-term** care facilities
4 within the service area in which the proposed new **[health] long-term** care service is to be
5 developed;
6 (2) "Agency", the certificate of need program of the Missouri department of health and
7 senior services;
8 (3) "Capital expenditure", an expenditure by or on behalf of a **[health] long-term** care
9 facility which, under generally accepted accounting principles, is not properly chargeable as an
10 expense of operation and maintenance;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended
to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

14 (5) "Develop", to undertake those activities which on their completion will result in the
15 offering of a new institutional [health] **long-term care** service or the incurring of a financial
16 obligation in relation to the offering of such a service;

17 (6) "Expenditure minimum" shall mean:

18 (a) For beds in existing or proposed [health] **long-term** care facilities licensed pursuant
19 to chapter 198, RSMo, and long-term care beds in a hospital as described in subdivision (3) of
20 subsection 1 of section 198.012, RSMo, six hundred thousand dollars in the case of capital
21 expenditures, or four hundred thousand dollars in the case of major medical equipment[,
22 provided, however, that prior to January 1, 2003, the expenditure minimum for beds in such a
23 facility and long-term care beds in a hospital described in section 198.012, RSMo, shall be zero,
24 subject to the provisions of subsection 7 of section 197.318];

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

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

30 (7) ["Health care facilities", hospitals, health maintenance organizations, tuberculosis
31 hospitals, psychiatric hospitals, intermediate care facilities, skilled nursing facilities, residential
32 care facilities I and II, kidney disease treatment centers, including freestanding hemodialysis
33 units, diagnostic imaging centers, radiation therapy centers and ambulatory surgical facilities,
34 but excluding the private offices of physicians, dentists and other practitioners of the healing arts,
35 and Christian Science sanatoriums, also known as Christian Science Nursing facilities listed and
36 certified by the Commission for Accreditation of Christian Science Nursing
37 Organization/Facilities, Inc., and facilities of not-for-profit corporations in existence on October
38 1, 1980, subject either to the provisions and regulations of Section 302 of the Labor-Management
39 Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29
40 U.S.C. 401-538, and any residential care facility I or residential care facility II operated by a
41 religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue
42 Code, as amended, which does not require the expenditure of public funds for purchase or
43 operation, with a total licensed bed capacity of one hundred beds or fewer;

44 (8) "Health service area", a geographic region appropriate for the effective planning and
45 development of health services, determined on the basis of factors including population and the

46 availability of resources, consisting of a population of not less than five hundred thousand or
47 more than three million;

48 (8) "**Long-term care facilities**", intermediate care facilities, skilled nursing facilities,
49 assisted living facilities, and residential care facilities, but excluding facilities of not-for-
50 profit corporations in existence on October 1, 1980, subject either to the provisions and
51 regulations of Section 302 of the Labor-Management Relations Act, 29 U.S.C. Section 186
52 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. Sections 401-531, and
53 any assisted living facility or residential care facility operated by a religious organization
54 qualified under Section 501(c)(3) of the federal Internal Revenue Code of 1986, as
55 amended, which does not require the expenditure of public funds for purchase or
56 operation, with a total licensed bed capacity of one hundred beds or fewer;

57 (9) "Major medical equipment", medical equipment used for the provision of [medical
58 and other health] **long-term care** services;

59 (10) "New institutional [health] **long-term care** service":

60 (a) The development of a new [health] **long-term** care facility costing in excess of the
61 applicable expenditure minimum;

62 (b) The acquisition, including acquisition by lease, of any [health] **long-term** care
63 facility, or major medical equipment costing in excess of the expenditure minimum;

64 (c) Any capital expenditure by or on behalf of a [health] **long-term** care facility in excess
65 of the expenditure minimum;

66 (d) Predevelopment activities as defined in subdivision (13) hereof costing in excess of
67 one hundred fifty thousand dollars;

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

71 (f) [Health] **Long-term care** services, excluding home health services, which are offered
72 in a [health] **long-term** care facility and which were not offered on a regular basis in such
73 [health] **long-term** care facility within the twelve-month period prior to the time such services
74 would be offered;

75 (g) A reallocation by an existing [health] **long-term** care facility of licensed beds among
76 major types of service or reallocation of licensed beds from one physical facility or site to
77 another by more than ten beds or more than ten percent of total licensed bed capacity, whichever
78 is less, over a two-year period;

79 (11) "Nonsubstantive projects", projects which do not involve the addition, replacement,
80 modernization or conversion of beds or the provision of a new [health] **long-term care** service
81 but which include a capital expenditure which exceeds the expenditure minimum and are due

82 to an act of God or a normal consequence of maintaining [health] **long-term** care services,
83 facility or equipment;

84 (12) "Person", any individual, trust, estate, partnership, corporation, including
85 associations and joint stock companies, state or political subdivision or instrumentality thereof,
86 including a municipal corporation;

87 (13) "Predevelopment activities", expenditures for architectural designs, plans, working
88 drawings and specifications, and any arrangement or commitment made for financing; but
89 excluding submission of an application for a certificate of need.

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

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

10 3. [After October 1, 1980,] No state agency charged by statute to license or certify
11 [health] **long-term** care facilities shall issue a license to or certify any such facility, or distinct
12 part of such facility, that is developed without obtaining a certificate of need.

13 4. If any person proposes to develop any new institutional [health] **long-term** care
14 service without a certificate of need as required by sections 197.300 to 197.366, the committee
15 shall notify the attorney general, and [he] **the attorney general** shall apply for an injunction or
16 other appropriate legal action in any court of this state against that person.

17 5. [After October 1, 1980,] No agency of state government may appropriate or grant
18 funds to or make payment of any funds to any person or [health] **long-term** care facility which
19 has not first obtained every certificate of need required pursuant to sections 197.300 to 197.366.

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

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

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

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

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

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

41 12. When a nursing facility shifts from a skilled to an intermediate level of nursing care,
42 it may return to the higher level of care if it meets the licensure requirements, without obtaining
43 a certificate of need.

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

46 14. A certificate of need shall not be required for the transfer of ownership of an existing
47 and operational [health] **long-term care** facility in its entirety.

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

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

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

58 18. To assure the safe, appropriate, and cost-effective transfer of new medical technology
59 throughout the state, a certificate of need shall not be required for the purchase and operation of
60 research equipment that is to be used in a clinical trial that has received written approval from
61 a duly constituted institutional review board of an accredited school of medicine or osteopathy
62 located in Missouri to establish its safety and efficacy and does not increase the bed complement

63 of the institution in which the equipment is to be located. After the clinical trial has been
64 completed, a certificate of need must be obtained for continued use in such facility.

197.317. 1. [After July 1, 1983,] No certificate of need shall be issued for the following:

2 (1) Additional [residential care] **assisted living** facility [I], residential care facility [II],
3 intermediate care facility or skilled nursing facility beds above the number then licensed by this
4 state;

5 (2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to
6 nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR,
7 Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to
8 paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

9 (3) The reallocation of intermediate care facility or skilled nursing facility beds of
10 existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant
11 to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds
12 in counties in which there is no existing nursing care facility. No certificate of need shall be
13 issued for the reallocation of existing **assisted living facility**, residential care facility [I or II], or
14 intermediate care facilities operated exclusively for the mentally retarded to intermediate care
15 or skilled nursing facilities or beds. However, [after January 1, 2003,] nothing in this section
16 shall prohibit the Missouri health facilities review committee from issuing a certificate of need
17 for additional beds in existing [health] **long-term** care facilities or for new beds in new [health]
18 **long-term** care facilities or for the reallocation of licensed beds[, provided that no construction
19 shall begin prior to January 1, 2004]. The provisions of subsections 16 and 17 of section
20 197.315 shall apply to the provisions of this section.

21 2. The health facilities review committee shall utilize demographic data from the office
22 of social and economic data analysis, or its successor organization, at the University of Missouri
23 as their source of information in considering applications for new institutional long-term care
24 facilities.

197.325. Any person who proposes to develop or offer a new institutional [health] **long-**
2 **term care** service shall submit a letter of intent to the committee at least thirty days prior to the
3 filing of the application.

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

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

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

197.366. The provisions of subdivision (8) of section 197.305 to the contrary
2 notwithstanding, after December 31, [2001] **2008**, the term "health care facilities" in sections
3 197.300 to 197.366 shall mean:

- 4 (1) Facilities licensed under chapter 198, RSMo;
- 5 (2) Long-term care beds in a hospital as described in subdivision (3) of subsection 1 of
6 section 198.012, RSMo; **and**
- 7 (3) Long-term care hospitals or beds in a long-term care hospital meeting the
8 requirements described in 42 CFR, section 412.23(e)]; and
- 9 (4) Construction of a new hospital as defined in chapter 197].

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

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