

SECOND REGULAR SESSION

HOUSE BILL NO. 2192

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SUTHERLAND.

Read 1st time February 19, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5101L.01I

AN ACT

To repeal sections 197.305 and 197.318, RSMo, and to enact in lieu thereof three new sections relating to certificate of need review for certain long-term care facilities.

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

Section A. Sections 197.305 and 197.318, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 197.305, 197.318, and 197.358, to read as
3 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 service, the public to be served, and health care facilities within the service area in which
4 the proposed new health care service is to be developed;

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

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

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

13 (5) **"Certification letter", a letter from the department of health and senior services**
14 **verifying that a project is a nonreviewable project;**

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.

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

18 **[(6)] (7)** "Expenditure minimum" shall mean:

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

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

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

31 **[(7)] (8)** "Health care facilities", hospitals, health maintenance organizations,
32 tuberculosis hospitals, psychiatric hospitals, intermediate care facilities, skilled nursing facilities,
33 residential care facilities and assisted living facilities, kidney disease treatment centers, including
34 freestanding hemodialysis units, diagnostic imaging centers, radiation therapy centers and
35 ambulatory surgical facilities, but excluding the private offices of physicians, dentists and other
36 practitioners of the healing arts, and Christian Science sanatoriums, also known as Christian
37 Science Nursing facilities listed and certified by the Commission for Accreditation of Christian
38 Science Nursing Organization/Facilities, Inc., and facilities of not-for-profit corporations in
39 existence on October 1, 1980, subject either to the provisions and regulations of Section 302 of
40 the Labor-Management Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and
41 Disclosure Act, 29 U.S.C. 401-538, and any residential care facility or assisted living facility
42 operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal
43 Internal Revenue Code, as amended, which does not require the expenditure of public funds for
44 purchase or operation, with a total licensed bed capacity of one hundred beds or fewer;

45 **[(8)] (9)** "Health service area", a geographic region appropriate for the effective planning
46 and development of health services, determined on the basis of factors including population and
47 the availability of resources, consisting of a population of not less than five hundred thousand
48 or more than three million;

49 **[(9)] (10)** "Major medical equipment", medical equipment used for the provision of
50 medical and other health services;

51 [(10)] **(11)** "New institutional health service":

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

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

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

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

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

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

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

70 **(12) "Nonreviewable project", a project that is exempt from the provisions of**
71 **sections 197.300 to 197.366. Such project shall not require approval by the health facilities**
72 **review committee;**

73 [(11)] **(13)** "Nonsubstantive projects", projects which do not involve the addition,
74 replacement, modernization or conversion of beds or the provision of a new health service but
75 which include a capital expenditure which exceeds the expenditure minimum and are due to an
76 act of God or a normal consequence of maintaining health care services, facility or equipment;

77 [(12)] **(14)** "Person", any individual, trust, estate, partnership, corporation, including
78 associations and joint stock companies, state or political subdivision or instrumentality thereof,
79 including a municipal corporation;

80 [(13)] **(15)** "Predevelopment activities", expenditures for architectural designs, plans,
81 working drawings and specifications, and any arrangement or commitment made for financing;
82 but excluding submission of an application for a certificate of need.

197.318. 1. The provisions of section 197.317 shall not apply to a residential care
2 facility, assisted living facility, intermediate care facility or skilled nursing facility only where
3 the department of social services has first determined that there presently exists a need for
4 additional beds of that classification because the average occupancy of all licensed and available

5 residential care facility, assisted living facility, intermediate care facility and skilled nursing
6 facility beds exceeds ninety percent for at least four consecutive calendar quarters, in a particular
7 county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise
8 appears to qualify for a certificate of need. The department's certification that there is no need
9 for additional beds shall serve as the final determination and decision of the committee. In
10 determining ninety percent occupancy, residential care facility and assisted living facility shall
11 be one separate classification and intermediate care and skilled nursing facilities are another
12 separate classification.

13 2. The Missouri health facilities review committee may, for any facility certified to it by
14 the department, consider the predominant ethnic or religious composition of the residents to be
15 served by that facility in considering whether to grant a certificate of need.

16 3. There shall be no expenditure minimum for facilities, beds, or services referred to in
17 subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire
18 January 1, 2003.

19 4. As used in this section, the term "licensed and available" means beds which are
20 actually in place and for which a license has been issued.

21 5. The provisions of section 197.317 shall not apply to any facility where at least
22 ninety-five percent of the patients require diets meeting the dietary standards defined by section
23 196.165, RSMo.

24 6. The committee shall review all letters of intent and applications for long-term care
25 hospital beds meeting the requirements described in 42 CFR, Section 412.23(e) under its criteria
26 and standards for long-term care beds.

27 7. Sections 197.300 to 197.366 shall not be construed to apply to litigation pending in
28 state court on or before April 1, 1996, in which the Missouri health facilities review committee
29 is a defendant in an action concerning the application of sections 197.300 to 197.366 to
30 long-term care hospital beds meeting the requirements described in 42 CFR, Section 412.23(e).

31 8. Notwithstanding any other provision of this chapter to the contrary:

32 (1) A facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed
33 capacity by:

34 (a) Submitting a letter of intent to expand to the division of aging and the health facilities
35 review committee;

36 (b) Certification from the division of aging that the facility:

37 a. Has no patient care class I deficiencies within the last eighteen months; and

38 b. Has maintained a ninety-percent average occupancy rate for the previous six quarters;

39 (c) Has made an effort to purchase beds for eighteen months following the date the letter
40 of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For purposes of

41 this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to
42 purchase beds from another licensed facility in the same licensure category; and

43 (d) If an agreement is reached by the selling and purchasing entities, the health facilities
44 review committee shall issue a certificate of need for the expansion of the purchaser facility upon
45 surrender of the seller's license; or

46 (e) If no agreement is reached by the selling and purchasing entities, the health facilities
47 review committee shall permit an expansion for:

48 a. A facility with more than forty beds may expand its licensed bed capacity within the
49 same licensure category by twenty-five percent or thirty beds, whichever is greater, if that same
50 licensure category in such facility has experienced an average occupancy of ninety-three percent
51 or greater over the previous six quarters;

52 b. A facility with fewer than forty beds may expand its licensed bed capacity within the
53 same licensure category by twenty-five percent or ten beds, whichever is greater, if that same
54 licensure category in such facility has experienced an average occupancy of ninety-two percent
55 or greater over the previous six quarters;

56 c. A facility adding beds pursuant to subparagraphs a. or b. of this paragraph shall not
57 expand by more than fifty percent of its then licensed bed capacity in the qualifying licensure
58 category;

59 (2) Any beds sold shall, for five years from the date of relicensure by the purchaser,
60 remain unlicensed and unused for any long-term care service in the selling facility, whether they
61 do or do not require a license;

62 (3) The beds purchased shall, for two years from the date of purchase, remain in the bed
63 inventory attributed to the selling facility and be considered by the department of social services
64 as licensed and available for purposes of this section;

65 (4) Any residential care facility **or assisted living facility** licensed pursuant to chapter
66 198, RSMo, may relocate any portion of such facility's current licensed beds to any other facility
67 to be licensed within the same licensure category if both facilities are under the same licensure
68 ownership or control, and are located within six miles of each other. **Such relocation shall be**
69 **a nonreviewable project;**

70 (5) A facility licensed pursuant to chapter 198, RSMo, may transfer or sell individual
71 long-term care licensed beds to facilities qualifying pursuant to paragraphs (a) and (b) of
72 subdivision (1) of this subsection. Any facility which transfers or sells licensed beds shall not
73 expand its licensed bed capacity in that licensure category for a period of five years from the date
74 the licensure is relinquished.

75 9. Any existing licensed and operating health care facility offering long-term care
76 services may replace one-half of its licensed beds at the same site or a site not more than thirty

77 miles from its current location if, for at least the most recent four consecutive calendar quarters,
78 the facility operates only fifty percent of its then licensed capacity with every resident residing
79 in a private room. In such case:

80 (1) The facility shall report to the division of aging vacant beds as unavailable for
81 occupancy for at least the most recent four consecutive calendar quarters;

82 (2) The replacement beds shall be built to private room specifications and only used for
83 single occupancy; and

84 (3) The existing facility and proposed facility shall have the same owner or owners,
85 regardless of corporate or business structure, and such owner or owners shall stipulate in writing
86 that the existing facility beds to be replaced will not later be used to provide long-term care
87 services. If the facility is being operated under a lease, both the lessee and the owner of the
88 existing facility shall stipulate the same in writing.

89 10. Nothing in this section shall prohibit a health care facility licensed pursuant to
90 chapter 198, RSMo, from being replaced in its entirety within fifteen miles of its existing site so
91 long as the existing facility and proposed or replacement facility have the same owner or owners
92 regardless of corporate or business structure and the health care facility being replaced remains
93 unlicensed and unused for any long-term care services whether they do or do not require a license
94 from the date of licensure of the replacement facility. **Such replacement shall be a**
95 **nonreviewable project.**

197.358. 1. The owner of any facility or beds may submit a written request prior
2 **to the start of any project to the department of health and senior services to verify its**
3 **exemption from sections 197.300 to 197.366.**

4 **2. Notwithstanding any other provision of this chapter, if the department**
5 **determines such project is exempt from sections 197.300 to 197.366, the department of**
6 **health and senior services shall issue a certification letter to such owner. Such decision**
7 **shall be considered final and subject to appeal under section 536.150, RSMo.**

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