

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 777
102ND GENERAL ASSEMBLY

1268H.03C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 197.305, 197.315, 197.318, and 197.330, RSMo, and to enact in lieu thereof five 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Section A. Sections 197.305, 197.315, 197.318, and 197.330, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 197.305, 197.315,
3 197.318, 197.321, and 197.330, 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 service, the public to be served, and health care facilities within the service area in
4 which the proposed new health care service is to be developed;
- 5 (2) "Agency", the certificate of need program of the Missouri department of health
6 and senior services;
- 7 (3) "Capital expenditure", an expenditure by or on behalf of a health care facility
8 which, under generally accepted accounting principles, is not properly chargeable as an
9 expense of 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) "Develop", to undertake those activities which on their completion will result in
14 the offering of a new institutional health service or the incurring of a financial obligation in
15 relation to the offering of such a service;
- 16 (6) "Expenditure minimum" shall mean:

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.

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

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

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

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

34 (8) "Major medical equipment", medical equipment used for the provision of medical
35 and other health services;

36 (9) "New institutional health service":

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

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

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

43 (d) Predevelopment activities as defined in subdivision (12) hereof costing in excess
44 of one hundred fifty thousand dollars;

45 (e) Any change in licensed bed capacity of a health care facility licensed under
46 chapter 198 which increases the total number of beds by more than ten or more than ten
47 percent of total bed capacity, whichever is less, over a two-year period, provided that any
48 such health care facility seeking a nonapplicability review for an increase in total beds or total
49 bed capacity in an amount less than described in this paragraph shall be eligible for such
50 review only if the facility has had no patient care class I deficiencies within the last eighteen
51 months and has maintained at least an eighty-five percent average occupancy rate for the
52 previous six quarters;

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

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

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

65 (11) "Person", any individual, trust, estate, partnership, corporation, including
66 associations and joint stock companies, state or political subdivision or instrumentality
67 thereof, including a municipal corporation;

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

71 **(13) "Rural area", any area that is not an urban area;**

72 **(14) "Urban area", any:**

73 **(a) County with more than seven hundred thousand but fewer than eight**
74 **hundred thousand inhabitants;**

75 **(b) County with more than two hundred thirty thousand but fewer than two**
76 **hundred sixty thousand inhabitants;**

77 **(c) County with more than one million inhabitants;**

78 **(d) County with more than four hundred thousand but fewer than five hundred**
79 **thousand inhabitants; or**

80 **(e) City not within a county.**

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

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

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

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

16 5. After October 1, 1980, no agency of state government may appropriate or grant
17 funds to or make payment of any funds to any person or health care facility which has not first
18 obtained every certificate of need required pursuant to sections 197.300 to 197.366.

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

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

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

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

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

37 11. In determining whether a certificate of need should be granted **for an applying**
38 **facility as licensed under chapter 197**, no consideration shall be given to the facilities or
39 equipment of any other health care facility **licensed under chapter 197 that is** located more
40 than a fifteen-mile radius from the applying facility.

41 **12. (1) In determining whether a certificate of need shall be granted for an**
42 **applying facility, as licensed under chapter 198 and in an urban area of the state, no**
43 **consideration shall be given to the facilities or equipment of any other health care**
44 **facility licensed under chapter 198 that is located more than a ten-mile radius from the**
45 **applying facility.**

46 **(2) In determining whether a certificate of need shall be granted for an applying**
47 **facility, as licensed under chapter 198 and in a rural area of the state, no consideration**
48 **shall be given to the facilities or equipment of any other health care facility licensed**
49 **under chapter 198 that is located more than a twenty-mile radius from the applying**
50 **facility.**

51 ~~[12.]~~ **13.** When a nursing facility shifts from a skilled to an intermediate level of
52 nursing care, it may return to the higher level of care if it meets the licensure requirements,
53 without obtaining a certificate of need.

54 ~~[13.]~~ **14.** In no event shall a certificate of need be denied because the applicant refuses
55 to provide abortion services or information.

56 ~~[14.]~~ **15.** A certificate of need shall not be required for the transfer of ownership of an
57 existing and operational health facility in its entirety.

58 ~~[15.]~~ **16.** A certificate of need may be granted to a facility for an expansion, an
59 addition of services, a new institutional service, or for a new hospital facility which provides
60 for something less than that which was sought in the application.

61 ~~[16.]~~ **17.** The provisions of this section shall not apply to facilities operated by the
62 state, and appropriation of funds to such facilities by the general assembly shall be deemed in
63 compliance with this section, and such facilities shall be deemed to have received an
64 appropriate certificate of need without payment of any fee or charge. The provisions of this
65 subsection shall not apply to hospitals operated by the state and licensed under this chapter,
66 except for department of mental health state-operated psychiatric hospitals.

67 ~~[17.]~~ **18.** Notwithstanding other provisions of this section, a certificate of need may
68 be issued after July 1, 1983, for an intermediate care facility operated exclusively for the
69 intellectually disabled.

70 ~~[18.]~~ **19.** To assure the safe, appropriate, and cost-effective transfer of new medical
71 technology throughout the state, a certificate of need shall not be required for the purchase
72 and operation of:

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

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

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

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

6 3. Sections 197.300 to 197.366 shall not be construed to apply to litigation pending in
7 state court on or before April 1, 1996, in which the Missouri health facilities review
8 committee is a defendant in an action concerning the application of sections 197.300 to
9 197.366 to long-term care hospital beds meeting the requirements described in 42 CFR,
10 Section 412.23(e).

11 4. Notwithstanding any other provision of this chapter to the contrary:

12 (1) A facility licensed pursuant to chapter 198 may increase its licensed bed capacity
13 by:

14 (a) Submitting a letter of intent to expand to the department of health and senior
15 services and the health facilities review committee;

16 (b) Certification from the department of health and senior services that the facility:

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

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

20 (c) Has made an effort to purchase beds for eighteen months following the date the
21 letter of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For
22 purposes of this paragraph, an "effort to purchase" means a copy certified by the offeror as an
23 offer to purchase beds from another licensed facility in the same licensure category; and

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

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

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

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

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

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

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

46 (4) Any residential care facility licensed pursuant to chapter 198 may relocate any
47 portion of such facility's current licensed beds to any other facility to be licensed within the
48 same licensure category if both facilities are under the same licensure ownership or control,
49 and are located within six miles of each other;

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

55 5. Any existing licensed and operating health care facility offering long-term care
56 services may replace one-half of its licensed beds at the same site or a site not more than
57 thirty miles from its current location if, for at least the most recent four consecutive calendar
58 quarters, the facility operates only fifty percent of its then licensed capacity with every
59 resident residing in a private room. In such case:

60 (1) The facility shall report to the health and senior services vacant beds as
61 unavailable for occupancy for at least the most recent four consecutive calendar quarters;

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

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

69 6. Nothing in this section shall prohibit a health care facility licensed pursuant to
70 chapter 198 from being replaced in its entirety within ~~fifteen~~:

71 (1) **Ten miles of its existing site if the existing site is in an urban area; or**

72 (2) **Twenty miles of its existing site if the existing site is in a rural area**

73

74 so long as the existing facility and proposed or replacement facility have the same owner or
75 owners regardless of corporate or business structure and the health care facility being

76 replaced remains unlicensed and unused for any long-term care services whether they do or
77 do not require a license from the date of licensure of the replacement facility.

**197.321. 1. For purposes of this section, unless the context requires otherwise,
2 the following terms mean:**

3 **(1) "Assisted living facility", the same meaning given to the term in section
4 198.006;**

5 **(2) "Beds report", the six-quarter occupancy of hospital and nursing home
6 licensed and available beds report issued by the department of health and senior
7 services that includes licensed beds for which certificates of need have been granted;**

8 **(3) "Intermediate care facility", the same meaning given to the term in section
9 198.006;**

10 **(4) "Residential care facility", the same meaning given to the term in section
11 198.006;**

12 **(5) "Service area", the ten-mile radius for urban areas and twenty-mile radius
13 for rural areas, as defined in chapter 197;**

14 **(6) "Skilled nursing facility", the same meaning given to the term in section
15 198.006.**

16 **2. Any application seeking approval of new or additional beds in any
17 intermediate care facility, skilled nursing facility, residential care facility, or assisted
18 living facility may be denied if the minimum average occupancy of all existing licensed
19 beds in the service area is not at least eighty percent for the most recent beds report.**

197.330. 1. The committee shall:

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

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

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

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

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

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

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

20 (8) Establish by regulation procedures to review, or grant a waiver from review,
21 nonsubstantive projects;

22 **(9) Conduct ongoing reviews of the accuracy of bed counts and information in**
23 **applications for certificates of need; and**

24 **(10) Employ a coordinator and additional staff to perform the duties assigned to**
25 **the committee by law and designate the coordinator or his or her designee to perform**
26 **any administrative functions that may be required of the committee by law. Staff shall**
27 **be housed at the principal office of the committee.**

28
29 The term "filed" or "filing" as used in this section shall mean delivery to the staff of the health
30 facilities review committee the document or documents the applicant believes constitute an
31 application.

32 2. Failure by the committee to issue a written decision on an application for a
33 certificate of need within the time required by this section shall constitute approval of and
34 final administrative action on the application, and is subject to appeal pursuant to section
35 197.335 only on the question of approval by operation of law.

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