

SECOND REGULAR SESSION

# HOUSE BILL NO. 2740

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE QUADE.

5640H.011

DANA RADEMAN MILLER, Chief Clerk

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## 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, with penalty provisions.

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

Section A. Sections 197.315 and 198.022, RSMo, are repealed and three new sections  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

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 shall apply for an injunction or other appropriate legal action in  
15 any court of this state against that person.

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.

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, no consideration  
38 shall be given to the facilities or equipment of any other health care facility located more than  
39 a fifteen-mile radius from the applying facility.

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

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

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

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

52           16. The provisions of this section shall not apply to facilities operated by the state,  
53 and appropriation of funds to such facilities by the general assembly shall be deemed in  
54 compliance with this section, and such facilities shall be deemed to have received an  
55 appropriate certificate of need without payment of any fee or charge. The provisions of this  
56 subsection shall not apply to hospitals operated by the state and licensed under this chapter,  
57 except for department of mental health state-operated psychiatric hospitals.

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

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

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

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

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

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

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

9           ~~(2)~~ (3) The facility and the operator are in substantial compliance with the  
10 provisions of sections 198.003 to 198.096 and the standards established thereunder;

11           ~~(3)~~ (4) The applicant has the financial capacity to operate the facility;

12           ~~(4)~~ (5) The administrator of an assisted living facility, a skilled nursing facility, or  
13 an intermediate care facility is currently licensed under the provisions of chapter 344;

14           ~~(5)~~ (6) Neither the operator nor any principals in the operation of the facility have  
15 ever been convicted of a felony offense concerning the operation of a long-term health care  
16 facility or other health care facility or ever knowingly acted or knowingly failed to perform  
17 any duty which materially and adversely affected the health, safety, welfare or property of a

18 resident, while acting in a management capacity. The operator of the facility or any principal  
19 in the operation of the facility shall not be under exclusion from participation in the Title  
20 XVIII (Medicare) or Title XIX (Medicaid) program of any state or territory;

21 ~~[(6)]~~ (7) Neither the operator nor any principals involved in the operation of the  
22 facility have ever been convicted of a felony in any state or federal court arising out of  
23 conduct involving either management of a long-term care facility or the provision or receipt  
24 of health care; **and**

25 ~~[(7)]~~ (8) All fees due to the state have been paid.

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

28 3. The department may inspect any facility and any records and may make copies of  
29 records, at the facility, at the department's own expense, required to be maintained by sections  
30 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a  
31 license has been issued to or an application for a license has been filed by the operator of such  
32 facility. Copies of any records requested by the department shall be prepared by the staff of  
33 such facility within two business days or as determined by the department. The department  
34 shall not remove or disassemble any medical record during any inspection of the facility, but  
35 may observe the photocopying or may make its own copies if the facility does not have the  
36 technology to make the copies. In accordance with the provisions of section 198.525, the  
37 department shall make at least one inspection per year, which shall be unannounced to the  
38 operator. The department may make such other inspections, announced or unannounced, as it  
39 deems necessary to carry out the provisions of sections 198.003 to 198.136.

40 4. Whenever the department has reasonable grounds to believe that a facility required  
41 to be licensed under sections 198.003 to 198.096 is operating without a license, and the  
42 department is not permitted access to inspect the facility, or when a licensed operator refuses  
43 to permit access to the department to inspect the facility, the department shall apply to the  
44 circuit court of the county in which the premises is located for an order authorizing entry for  
45 such inspection, and the court shall issue the order if it finds reasonable grounds for  
46 inspection or if it finds that a licensed operator has refused to permit the department access to  
47 inspect the facility.

48 5. Whenever the department is inspecting a facility in response to an application from  
49 an operator located outside of Missouri not previously licensed by the department, the  
50 department may request from the applicant the past five years compliance history of all  
51 facilities owned by the applicant located outside of this state.

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

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

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

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

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

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

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

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

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

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

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

25           3. Assisted living facilities shall electronically submit to CMS complete and  
26 accurate direct care staffing information, including information for agency and contract  
27 staff, based on payroll and other verifiable and auditable data in a uniform format  
28 according to specifications established by CMS in accordance with 42 CFR 483.70(q).

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

32           5. The department may impose appropriate sanctions and assess an  
33 administrative penalty under this section on an administrator of a facility who fails to  
34 meet the minimum staffing standards two quarters in a row as determined by rule.

35           6. (1) An assisted living facility may be exempted from the minimum staffing  
36 requirements of subdivisions (1) and (2) of subsection 2 of this section by the department  
37 if a verifiable hardship exists that prohibits the facility from achieving or maintaining  
38 compliance as demonstrated by meeting the following criteria:

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

40           **a. The supply of applicable health care staff, either registered professional**  
41 **nurses or certified nursing assistants or both, is not sufficient to meet area needs as**  
42 **evidenced by a provider-population ratio for nursing workforce that is medium, twenty**  
43 **percent below the national average, or low, forty percent below the national average;**  
44 **and**

45           **b. The facility is at least twenty miles from another assisted living facility;**

46           **(b) The facility demonstrates that it has been unable, despite diligent efforts,**  
47 **including offering at least prevailing wages, to recruit and retain appropriate personnel**  
48 **as verified by:**

49           **a. Job listings in commonly used recruitment forums found online at American**  
50 **Job Centers, coordinated by the United States Department of Labor's Employment and**  
51 **Training Administration; MoJobs, coordinated by the department of higher education**  
52 **and workforce development; and other forums as appropriate;**

53           **b. Documented job vacancies, including the number and duration of the**  
54 **vacancies and documentation of offers made, including that they were made at least at**  
55 **prevailing wages;**

56           **c. Data on the average wages in the metropolitan statistical area in which the**  
57 **facility is located and vacancies by industry as reported by the department of labor and**  
58 **industrial relations; and**

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

61           **(c) The facility demonstrates through documentation the amount of financial**  
62 **resources that the facility expends on nurse staffing relative to revenue.**

63           **(2) A facility shall not be eligible for a hardship waiver from the minimum**  
64 **staffing requirements if the facility:**

65           **(a) Has been cited, within the twelve months preceding the survey during which**  
66 **the facility's noncompliance is identified:**

67           **a. For having widespread insufficient staffing with resultant resident actual**  
68 **harm;**

69           **b. For a pattern of insufficient staffing with resultant resident actual harm; or**

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

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

73           **7. In order to appropriately manage required nursing staff, an assisted living**  
74 **facility shall:**

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

77           **(2) Designate a registered professional nurse to serve as a charge nurse for each**  
78 **nursing shift. The director of nursing designated in subdivision (1) of this subsection**  
79 **may serve as a charge nurse only if the facility has an average daily occupancy of sixty**  
80 **or fewer residents.**

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