

SECOND REGULAR SESSION

HOUSE BILL NO. 1401

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RICHARDSON (Sponsor) AND FREDERICK (Co-sponsor).

5328L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 197.300, 197.305, 197.310, 197.311, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, and 197.367, RSMo, and to enact in lieu thereof fifteen new sections relating to certificate of need, with penalty provisions.

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

Section A. Sections 197.300, 197.305, 197.310, 197.311, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, 197.366, and 197.367, RSMo, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 197.300, 197.305, 197.310, 197.311, 197.315, 197.318, 197.325, 197.326, 197.330, 197.335, 197.340, 197.345, 197.355, 197.357, and 197.367, to read as follows:

197.300. Sections 197.300 to 197.366 shall be known as the "Missouri **Long-term Care** Certificate of Need Law".

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 institutional [health] **long-term care** service, the public to be served, and [health] **long-term** care facilities within the service area in which the proposed new [health] **long-term** care service is to be developed;
- (2) "Agency", the certificate of need program of the Missouri department of health and senior services;
- (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 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] **197.367**;

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

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) **"Long-term care facility" or "facility"**:

31 (a) **A facility licensed under chapter 198;**

32 (b) **Long-term care beds in a hospital as described in subdivision (3) of subsection**
33 **1 of section 198.012; and**

34 (c) **A long-term care hospital or beds in a long-term care hospital meeting the**
35 **requirements described in 42 CFR, section 412.23(e);**

36 (8) **"[Health] Long-term care service area"**, a geographic region appropriate for the
37 effective planning and development of [health] **long-term care** services, determined on the basis
38 of factors including population and the availability of resources, consisting of a population of not
39 less than five hundred thousand or more than three million;

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

42 (9) "New institutional [health] **long-term care** service":

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

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

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

49 (d) Redevelopment activities as defined in subdivision (12) [hereof] **of this section**
50 costing in excess of one hundred fifty thousand dollars;

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

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

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

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

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

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

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

4 2. The committee shall be composed of:

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

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

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

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

12 4. [The members shall be appointed as soon as possible after September 28, 1979. One
13 of the senate members, one of the house members and three of the members appointed by the
14 governor shall serve until January 1, 1981, and the remaining members shall serve until January
15 1, 1982.] All [subsequent] members shall be appointed in the manner provided in subsection 2
16 of this section and shall serve terms of two years.

17 5. The committee shall elect a [chairman] **chair** at its first meeting which shall be called
18 by the governor. The committee shall meet upon the call of the [chairman] **chair** or the
19 governor.

20 6. The committee shall review and approve or disapprove all applications for a certificate
21 of need made under sections 197.300 to 197.366. It shall issue reasonable rules and regulations
22 governing the submission, review and disposition of applications.

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

25 8. Notwithstanding the provisions of subsection 4 of section 610.025, the proceedings
26 and records of the facilities review committee shall be subject to the provisions of chapter 610.

197.311. No member of the Missouri [health] **long-term care** facilities review
2 committee may accept a political donation from any applicant for a license.

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] **August 28, 2012**, no state agency charged by statute to license
11 or certify [health care] facilities shall issue a license to or certify any such facility, or distinct part
12 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] **197.367**, the
15 committee shall notify the attorney general, and he **or she** shall apply for an injunction or other
16 appropriate legal action in any court of this state against that person.

17 5. After [October 1, 1980] **August 28, 2012**, no agency of state government may
18 appropriate or grant funds to or make payment of any funds to any person or [health care] facility

19 which has not first obtained every certificate of need required pursuant to sections 197.300 to
20 [197.366] **197.367**.

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

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

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

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

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

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

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

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

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

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 something
51 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, and
53 appropriation of funds to such facilities by the general assembly shall be deemed in compliance

54 with this section, and such facilities shall be deemed to have received an appropriate certificate
55 of need without payment of any fee or charge.

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

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

197.318. 1. As used in this section, the term "licensed and available" means beds which
2 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 criteria
5 and standards for long-term care beds.

6 3. Sections 197.300 to [197.366] **197.367** shall not be construed to apply to litigation
7 pending in state court on or before April 1, 1996, in which the Missouri [health] **long-term care**
8 facilities review committee is a defendant in an action concerning the application of sections
9 197.300 to [197.366] **197.367** to long-term care hospital beds meeting the requirements described
10 in 42 CFR, 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 by:

13 (a) Submitting a letter of intent to expand to the division of [aging] **regulation and**
14 **licensure** and the [health] **long-term care** facilities review committee;

15 (b) Certification from the division of [aging] **regulation and licensure** that the facility:

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

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

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

22 (d) If an agreement is reached by the selling and purchasing entities, the [health] **long-**
23 **term care** facilities review committee shall issue a certificate of need for the expansion of the
24 purchaser facility upon surrender of the seller's license; or

25 (e) If no agreement is reached by the selling and purchasing entities, the [health] **long-**
26 **term care** facilities review committee shall permit an expansion for:

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

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

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

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

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

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

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

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

58 (1) The facility shall report to the division of [aging] **regulation and licensure** vacant
59 **long-term care** beds as unavailable for occupancy for at least the most recent four consecutive
60 calendar quarters;

61 (2) The replacement **long-term care** beds shall be built to private room specifications and
62 only used for single occupancy; and

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

68 6. Nothing in this section shall prohibit a [health] **long-term** care facility licensed
69 pursuant to chapter 198 from being replaced in its entirety within fifteen miles of its existing site
70 so long as the existing facility and proposed or replacement facility have the same owner or
71 owners regardless of corporate or business structure and the [health care] facility being replaced
72 remains unlicensed and unused for any long-term care services whether they do or do not require
73 a license from the date of licensure of the replacement facility.

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.

197.326. 1. Any person who is paid either as part of his normal employment or as a
2 lobbyist to support or oppose any project before the [health] **long-term care** facilities review
3 committee shall register as a lobbyist pursuant to chapter 105 and shall also register with the staff
4 of the [health] **long-term care** facilities review committee for every project in which such person
5 has an interest and indicate whether such person supports or opposes the named project. The
6 registration shall also include the names and addresses of any person, firm, corporation or
7 association that the person registering represents in relation to the named project. Any person
8 violating the provisions of this subsection shall be subject to the penalties specified in section
9 105.478.

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

15 3. Any person regulated by chapter 197 or 198 and any officer, attorney, agent and
16 employee thereof, shall not offer to any committee member or to any person employed as staff
17 to the committee, any office, appointment or position, or any present, gift, entertainment or
18 gratuity of any kind or any campaign contribution while such application is pending before the
19 [health] **long-term care** facilities review committee. Any person guilty of knowingly violating
20 the provisions of this section shall be punished as follows: For the first offense, such person is

21 guilty of a class B misdemeanor; and for the second and subsequent offenses, such person is guilty
22 of a class D felony.

197.330. 1. The committee shall:

2 (1) Notify the applicant within fifteen days of the date of filing of an application as to the
3 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 schedule
6 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, issue
10 in writing its findings of fact, conclusions of law, and its approval or denial of the certificate of
11 need; provided, that the committee may grant an extension of not more than thirty days on its own
12 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 any
14 affected person who has filed his prior request in writing, a copy of the aforesaid findings,
15 conclusions and decisions;

16 (6) Consider the needs and circumstances of institutions providing training programs for
17 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. The term "filed" or "filing" as used in this section shall mean delivery
22 to the staff of the [health] **long-term care** facilities review committee the document or documents
23 the applicant believes constitute an application.

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

197.335. Within thirty days of the decision of the committee, the applicant may file an
2 appeal to be heard de novo by the administrative hearing commissioner, the circuit court of Cole
3 County or the circuit court in the county within which such [health] **long-term** care service or
4 facility is proposed to be developed.

197.340. Any [health] facility providing a [health] **long-term care** service [must] **shall**
2 notify the committee of any discontinuance of any previously provided [health] **long-term** care

3 service, a decrease in the number of licensed beds by ten percent or more, or the change in
4 licensure category for any such facility.

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

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

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

197.367. Upon application for renewal by any residential care facility or assisted living
2 facility which on [the effective date of this act has been] **August 28, 1999, was** licensed for more
3 than five years, is licensed for more than fifty beds and fails to maintain for any calendar year its
4 occupancy level above thirty percent of its then licensed beds, the division of [aging] **regulation**
5 **and licensure** shall license only fifty beds for such facility.

[197.366. The term "health care facilities" in sections 197.300 to 197.366
2 shall mean:

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

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