

FIRST REGULAR SESSION

# HOUSE BILL NO. 1170

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BONDON.

2377H.02I

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To repeal sections 197.305 and 197.318, RSMo, and to enact in lieu thereof two new sections relating to the occupancy rate of health 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Section A. Sections 197.305 and 197.318, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 197.305 and 197.318, to read as follows:

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 service, the public to be served, and health care facilities within the service area in which the proposed new health 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;

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

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

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

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

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

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

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

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

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

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

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 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 committee  
8 is a defendant in an action concerning the application of sections 197.300 to 197.366 to  
9 long-term care hospital beds meeting the requirements described in 42 CFR, Section 412.23(e).

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

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

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

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

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

16 b. Has maintained ~~a ninety-percent~~ **an eighty-five percent** average occupancy rate for  
17 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

20 this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to  
21 purchase 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 facilities  
23 review committee shall issue a certificate of need for the expansion of the purchaser facility upon  
24 surrender of the seller's license; or

25 (e) If no agreement is reached by the selling and purchasing entities, the health facilities  
26 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  
45 portion 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 **and available** beds to facilities qualifying pursuant to paragraphs (a) and (b) of  
50 subdivision (1) of this subsection. Any facility which transfers or sells licensed **and available**  
51 beds shall not expand its licensed bed capacity in that licensure category for a period of five years  
52 from the date the licensure is relinquished **or shall not increase its licensed and available bed**  
53 **count after the sale of the beds until the average occupancy within a fifteen-mile radius is**  
54 **eighty-five percent. Any facility which transfers or sells licensed and available beds shall**  
55 **have an average occupancy rate of less than seventy percent in the last six quarters.**

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

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

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

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

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

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