

SECOND REGULAR SESSION

SENATE BILL NO. 763

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2726S.01I

AN ACT

To repeal sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.345, 197.355, and 197.357, RSMo, and to enact in lieu thereof eight new sections relating to certificate of need.

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

Section A. Sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.345, 197.355, and 197.357, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 197.305, 197.315, 197.317, 197.325, 197.340, 197.345, 197.355, and 197.357, to read as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] **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] **long-term** 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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

the offering of a new institutional [health] **long-term care** service or the incurring of a financial obligation in relation to the offering of such a service;

(6) "Expenditure minimum" shall mean:

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

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

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

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

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

(8) "**Long-term care facilities**", **intermediate care facilities, skilled nursing facilities, residential care facilities I and II, but excluding facilities of not-for-profit corporations in existence on October 1, 1980, subject either to the provisions**

and regulations of Section 302 of the Labor-Management Relations Act, 29 U.S.C. Section 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C. Sections 401-531, and any residential care facility I or residential care facility II operated by a religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue Code, as amended, which does not require the expenditure of public funds for purchase or operation, with a total licensed bed capacity of one hundred beds or fewer;

(9) "Major medical equipment", medical equipment used for the provision of [medical and other health] **long-term care** services;

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

(a) The development of a new [health] **long-term** care facility costing in excess of the applicable expenditure minimum;

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

(c) Any capital expenditure by or on behalf of a [health] **long-term** care facility in excess of the expenditure minimum;

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

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

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

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

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

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

(13) "Predevelopment activities", expenditures for architectural designs, plans,

working drawings and specifications, and any arrangement or commitment made for financing; but excluding submission of an application for a certificate of need.

197.315. 1. Any person who proposes to develop or offer a new institutional [health] **long-term care** service within the state must obtain a certificate of need from the committee prior to the time such services are offered.

2. Only those new institutional [health] **long-term care** services which are found by the committee to be needed shall be granted a certificate of need. Only those new institutional [health] **long-term care** services which are granted certificates of need shall be offered or developed within the state. No expenditures for new institutional [health] **long-term care** services in excess of the applicable expenditure minimum shall be made by any person unless a certificate of need has been granted.

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

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

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

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

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

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

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

10. Each application for a certificate of need must be accompanied by an application fee. The time of filing commences with the receipt of the application and the application fee. The application fee is one thousand dollars, or one-tenth of one percent of the total cost of the proposed project, whichever is greater. All application fees shall be deposited in the

state treasury. Because of the loss of federal funds, the general assembly will appropriate funds to the Missouri health facilities review committee.

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

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

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

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

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

16. The provisions of this section shall not apply to facilities operated by the state, and appropriation of funds to such facilities by the general assembly shall be deemed in compliance with this section, and such facilities shall be deemed to have received an appropriate certificate of need without payment of any fee or charge.

17. Notwithstanding other provisions of this section, a certificate of need may be issued after July 1, 1983, for an intermediate care facility operated exclusively for the mentally retarded.

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

197.317. 1. After July 1, 1983, no certificate of need shall be issued for the following:

(1) Additional residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility beds above the number then licensed by this state;

(2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR, Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

(3) The reallocation of intermediate care facility or skilled nursing facility beds of

existing licensed beds by transfer or sale of licensed beds between a hospital licensed pursuant to this chapter or a nursing care facility licensed pursuant to chapter 198, RSMo; except for beds in counties in which there is no existing nursing care facility. No certificate of need shall be issued for the reallocation of existing residential care facility I or II, or intermediate care facilities operated exclusively for the mentally retarded to intermediate care or skilled nursing facilities or beds. However, after January 1, 2003, nothing in this section shall prohibit the Missouri health facilities review committee from issuing a certificate of need for additional beds in existing [health] **long-term** care facilities or for new beds in new [health] **long-term** care facilities or for the reallocation of licensed beds, provided that no construction shall begin prior to January 1, 2004. The provisions of subsections 16 and 17 of section 197.315 shall apply to the provisions of this section.

2. The health facilities review committee shall utilize demographic data from the office of social and economic data analysis, or its successor organization, at the University of Missouri as their source of information in considering applications for new institutional long-term care facilities.

197.325. Any person who proposes to develop or offer a new institutional [health] **long-term care** service shall submit a letter of intent to the committee at least thirty days prior to the filing of the application.

197.340. Any [health] **long-term care** facility providing a [health] **long-term care** service must notify the committee of any discontinuance of any previously provided [health] **long-term** care service, a decrease in the number of licensed beds by ten percent or more, or the change in licensure category for any such facility.

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

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

197.357. For the purposes of reimbursement under section 208.152, RSMo, project costs for new institutional [health] **long-term care** services in excess of ten percent of the initial project estimate whether or not approval was obtained under subsection 7 of section 197.315 shall not be eligible for reimbursement for the first three years that a facility receives payment for services provided under section 208.152, RSMo. The initial estimate shall be that amount for which the original certificate of need was obtained or, in the case of facilities for which a binding construction or purchase contract was executed prior to

October 1, 1980, the amount of that contract. Reimbursement for these excess costs after the first three years shall not be made until a certificate of need has been granted for the excess project costs. The provisions of this section shall apply only to facilities which file an application for a certificate of need or make application for cost-overflow review of their original application or waiver after August 13, 1982.

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