

SECOND REGULAR SESSION

# HOUSE BILL NO. 2457

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE JONES (117).

Read 1st time March 26, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5522L.01I

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### AN ACT

To repeal section 197.318, RSMo, and to enact in lieu thereof one new section relating to the transfer of long-term care beds to certain new health care facilities.

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

Section A. Section 197.318, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 197.318, to read as follows:

197.318. 1. The provisions of section 197.317 shall not apply to a residential care facility, assisted living facility, intermediate care facility or skilled nursing facility only where the department of social services has first determined that there presently exists a need for additional beds of that classification because the average occupancy of all licensed and available residential care facility, assisted living facility, intermediate care facility and skilled nursing facility beds exceeds ninety percent for at least four consecutive calendar quarters, in a particular county, and within a fifteen-mile radius of the proposed facility, and the facility otherwise appears to qualify for a certificate of need. The department's certification that there is no need for additional beds shall serve as the final determination and decision of the committee. In determining ninety percent occupancy, residential care facility and assisted living facility shall be one separate classification and intermediate care and skilled nursing facilities are another separate classification.

2. The Missouri health facilities review committee may, for any facility certified to it by the department, consider the predominant ethnic or religious composition of the residents to be served by that facility in considering whether to grant a certificate of need.

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           3. There shall be no expenditure minimum for facilities, beds, or services referred to in  
17 subdivisions (1), (2) and (3) of section 197.317. The provisions of this subsection shall expire  
18 January 1, 2003.

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

21           5. The provisions of section 197.317 shall not apply to any facility where at least  
22 ninety-five percent of the patients require diets meeting the dietary standards defined by section  
23 196.165, RSMo.

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

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

31           8. Notwithstanding any other provision of this chapter to the contrary:

32           (1) A facility licensed pursuant to chapter 198, RSMo, may increase its licensed bed  
33 capacity by:

34           (a) Submitting a letter of intent to expand to the division of aging and the health facilities  
35 review committee;

36           (b) Certification from the division of aging that the facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

79           (1) The facility shall report to the division of aging vacant beds as unavailable for  
80 occupancy for at least the most recent four consecutive calendar quarters;

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

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

88           10. Nothing in this section shall prohibit a health care facility licensed pursuant to  
89 chapter 198, RSMo, from being replaced in its entirety within fifteen miles of its existing site so  
90 long as the existing facility and proposed or replacement facility have the same owner or owners  
91 regardless of corporate or business structure and the health care facility being replaced remains  
92 unlicensed and unused for any long-term care services whether they do or do not require a license  
93 from the date of licensure of the replacement facility.

94           **11. (1) Notwithstanding any provisions of this chapter to the contrary, a new health**  
95 **care facility may be licensed under chapter 198, RSMo, by arranging for the transfer of**  
96 **licensed skilled nursing or assisted living facility beds to such new health care facility,**  
97 **provided the following criteria are satisfied:**

98           **(a) A letter of intent to develop the new health care facility is submitted to the**  
99 **department and to the Missouri health facilities review committee;**

100           **(b) The department certifies that the beds proposed for transfer are from skilled**  
101 **nursing or assisted living facilities in this state and have maintained an average occupancy**  
102 **in the relevant licensure category of under seventy percent for the previous six calendar**  
103 **quarters;**

104           **(c) The proposed new health care facility is an integrated part of a continuing care**  
105 **retirement community that includes a minimum of one thousand independent living facility**  
106 **beds and a medical clinic, and otherwise satisfies all conditions of licensure under chapter**  
107 **198, RSMo; and**

108           **(d) The number of skilled nursing or assisted living facility beds in the proposed**  
109 **new health care facility does not exceed a ratio of one to eleven as compared to the**  
110 **aforesaid independent living facility beds.**

111           **(2) The transferring of beds under this subsection shall only be within the same**  
112 **licensure category and not be subject to review under sections 197.300 to 197.366. The**  
113 **facility transferring beds under this subsection shall not seek to add beds within a five-year**  
114 **period of time after the transaction.**

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