

SECOND REGULAR SESSION

HOUSE BILL NO. 2082

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BERKOWITZ, BRITT,
RICHARDSON AND CROWELL (Co-sponsors).

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TED WEDEL, Chief Clerk

4468L.01I

AN ACT

To repeal sections 197.305, 197.317 and 197.318, RSMo, and to enact in lieu thereof three new sections relating to the Missouri certificate of need law.

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

Section A. Sections 197.305, 197.317 and 197.318, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 197.305, 197.317 and 197.318, to read
3 as follows:

197.305. As used in sections 197.300 to 197.366, the following terms mean:

2 (1) "Affected persons", the person proposing the development of a new institutional
3 health service, the public to be served, and health care facilities within the service area in which
4 the proposed new health care service is to be developed;

5 (2) "Agency", the certificate of need program of the Missouri department of health and
6 senior services;

7 (3) "Capital expenditure", an expenditure by or on behalf of a health care facility which,
8 under generally accepted accounting principles, is not properly chargeable as an expense of
9 operation and maintenance;

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

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

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

16 (6) "Expenditure minimum" shall mean:

17 (a) For beds in existing or proposed health care facilities licensed pursuant to chapter
18 198, RSMo, and long-term care beds in a hospital as described in subdivision (3) of subsection
19 1 of section 198.012, RSMo, six hundred thousand dollars in the case of capital expenditures,
20 or four hundred thousand dollars in the case of major medical equipment, provided, however,
21 that [prior to January 1, 2003] **until December thirty-first of the year following the calendar**
22 **year in which the division of health standards and licensure certifies to the Missouri**
23 **general assembly that all health care facilities licensed pursuant to chapter 198, RSMo, and**
24 **long-term care beds in a hospital, as described in subdivision (3) of subsection 1 of section**
25 **198.012, RSMo, have maintained an average statewide occupancy rate of ninety percent**
26 **or higher of all licensed beds for the four quarters immediately preceding such**
27 **certification**, the expenditure minimum for beds in such a facility and long-term care beds in a
28 hospital described in section 198.012, RSMo, shall be zero, subject to the provisions of
29 subsection 7 of section 197.318;

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

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

35 (7) "Health care facilities", hospitals, health maintenance organizations, tuberculosis
36 hospitals, psychiatric hospitals, intermediate care facilities, skilled nursing facilities, residential
37 care facilities I and II, kidney disease treatment centers, including freestanding hemodialysis
38 units, diagnostic imaging centers, radiation therapy centers and ambulatory surgical facilities,
39 but excluding the private offices of physicians, dentists and other practitioners of the healing arts,
40 and Christian Science sanatoriums, also known as Christian Science Nursing facilities listed and
41 certified by the Commission for Accreditation of Christian Science Nursing
42 Organization/Facilities, Inc., and facilities of not-for-profit corporations in existence on October
43 1, 1980, subject either to the provisions and regulations of Section 302 of the Labor-Management
44 Relations Act, 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29
45 U.S.C. 401-538, and any residential care facility I or residential care facility II operated by a
46 religious organization qualified pursuant to Section 501(c)(3) of the federal Internal Revenue
47 Code, as amended, which does not require the expenditure of public funds for purchase or
48 operation, with a total licensed bed capacity of one hundred beds or fewer;

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

52 more than three million;

53 (9) "Major medical equipment", medical equipment used for the provision of medical
54 and other health services;

55 (10) "New institutional health service":

56 (a) The development of a new health care facility costing in excess of the applicable
57 expenditure minimum;

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

60 (c) Any capital expenditure by or on behalf of a health care facility in excess of the
61 expenditure minimum;

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

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

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

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

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

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

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

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

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

4 (2) Beds in a licensed hospital to be reallocated on a temporary or permanent basis to

5 nursing care or beds in a long-term care hospital meeting the requirements described in 42 CFR,
6 Section 412.23(e), excepting those which are not subject to a certificate of need pursuant to
7 paragraphs (e) and (g) of subdivision (10) of section 197.305; nor

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

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

24 **3. The provisions of this section shall apply only to the year following the calendar**
25 **year in which the division of health standards and licensure certifies to the Missouri**
26 **general assembly that all health care facilities licensed pursuant to chapter 198, RSMo, and**
27 **long-term care beds in a hospital, as described in subdivision (3) of subsection 1 of section**
28 **198.012, RSMo, have maintained an average statewide occupancy rate of ninety percent**
29 **or higher of all licensed beds for the four quarters immediately preceding such**
30 **certification.**

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

11 classification and intermediate care and skilled nursing facilities are another separate
12 classification.

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

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] **apply only to the year following the calendar year in which the division of**
19 **health standards and licensure certifies to the Missouri general assembly that all health**
20 **care facilities licensed pursuant to chapter 198, RSMo, and long-term care beds in a**
21 **hospital, as described in subdivision (3) of subsection 1 of section 198.012, RSMo, have**
22 **maintained an average statewide occupancy rate of ninety percent or higher of all licensed**
23 **beds for the four quarters immediately preceding such certification.**

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

26 5. The provisions of section 197.317 shall not apply to any facility where at least
27 ninety-five percent of the patients require diets meeting the dietary standards defined by section
28 196.165, RSMo.

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

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

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

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

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

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

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

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

44 (c) Has made an effort to purchase beds for eighteen months following the date the letter
45 of intent to expand is submitted pursuant to paragraph (a) of this subdivision. For purposes of
46 this paragraph, an "effort to purchase" means a copy certified by the offeror as an offer to

47 purchase beds from another licensed facility in the same licensure category; and

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

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

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

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

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

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

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

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

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

79 9. Any existing licensed and operating health care facility offering long-term care
80 services may replace one-half of its licensed beds at the same site or a site not more than thirty
81 miles from its current location if, for at least the most recent four consecutive calendar quarters,
82 the facility operates only fifty percent of its then licensed capacity with every resident residing

83 in a private room. In such case:

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

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

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

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