

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 82
100TH GENERAL ASSEMBLY

Reported from the Committee on Health and Pensions, April 4, 2019, with recommendation that the Senate Committee Substitute do pass.

0719S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 197.305, 197.315, 197.326, 197.330, 197.366, and 208.225, RSMo, and to enact in lieu thereof five new sections relating to health care facilities, with existing penalty provisions.

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

Section A. Sections 197.305, 197.315, 197.326, 197.330, 197.366, and
2 208.225, RSMo, are repealed and five new sections enacted in lieu thereof, to be
3 known as sections 197.305, 197.315, 197.326, 197.330, and 208.225, to read as
4 follows:

197.305. As used in sections 197.300 to [197.366] **197.367**, the following
2 terms mean:

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

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

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

12 (4) "Certificate of need", a written certificate issued by the committee
13 setting forth the committee's affirmative finding that a proposed project
14 sufficiently satisfies the criteria prescribed for such projects by sections 197.300
15 to [197.366] **197.367**;

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

16 (5) "Committee", the Missouri health facilities review committee;
17 (6) "Department", the department of health and senior services;
18 (7) "Develop", to undertake those activities which on their completion will
19 result in the offering of a new institutional health service or the incurring of a
20 financial obligation in relation to the offering of such a service;

21 [(6)] (8) "Ex parte communication", any communication outside
22 of a pending application process with a committee member or any
23 person employed as staff to the committee or agency regarding any
24 matter or issue within the jurisdiction of the committee;

25 (9) "Expenditure minimum" shall mean:

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

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

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

41 [(7)] (10) "Health care facilities" shall mean:

42 (a) Facilities licensed under chapter 198;

43 (b) Long-term care beds in a hospital as described in subdivision
44 (3) of subsection 1 of section 198.012;

45 (c) Long-term care hospitals or beds in a long-term care hospital
46 meeting the requirements described in 42 CFR 412.23(e); and

47 (d) Construction of a new hospital as the term "hospital" is
48 defined in section 197.020;

49 (11) "Health service area", a geographic region appropriate for the
50 effective planning and development of health services, determined on the basis
51 of factors including population and the availability of resources, consisting of a

52 population of not less than five hundred thousand or more than three million;

53 [(8) "Major medical equipment", medical equipment used for the provision

54 of medical and other health services;

55 (9)] **(12)** "New institutional health service":

56 (a) The development of a new health care facility costing in excess of the

57 applicable expenditure minimum;

58 (b) The acquisition, including acquisition by lease, of any health care

59 facility[, or major medical equipment costing] in excess of the expenditure

60 minimum;

61 (c) Any capital expenditure by or on behalf of a health care facility in

62 excess of the expenditure minimum;

63 (d) Predevelopment activities as defined in [subdivision (12)] **this**

64 **section**, hereof costing in excess of one hundred fifty thousand dollars;

65 (e) Any change in licensed bed capacity of a health care facility licensed

66 under chapter 198 which increases the total number of beds by more than ten or

67 more than ten percent of total bed capacity, whichever is less, over a two-year

68 period, provided that any such health care facility seeking a nonapplicability

69 review for an increase in total beds or total bed capacity in an amount less than

70 described in this paragraph shall be eligible for such review only if the facility

71 has had no patient care class I deficiencies within the last eighteen months and

72 has maintained at least an eighty-five percent average occupancy rate for the

73 previous six quarters;

74 (f) Health services, excluding home health services, which are offered in

75 a health care facility and which were not offered on a regular basis in such health

76 care facility within the twelve-month period prior to the time such services would

77 be offered;

78 (g) A reallocation by an existing health care facility of licensed beds

79 among major types of service or reallocation of licensed beds from one physical

80 facility or site to another by more than ten beds or more than ten percent of total

81 licensed bed capacity, whichever is less, over a two-year period;

82 [(10)] **(13)** "Nonsubstantive projects", projects which do not involve the

83 addition, replacement, modernization or conversion of beds or the provision of a

84 new health service but which include a capital expenditure which exceeds the

85 expenditure minimum and are due to an act of God or a normal consequence of

86 maintaining health care services, facility or equipment;

87 [(11)] **(14)** "Person", any individual, trust, estate, partnership,

88 corporation, including associations and joint stock companies, state or political
89 subdivision or instrumentality thereof, including a municipal corporation;

90 ~~[(12)]~~ **(15)** "Predevelopment activities", expenditures for architectural
91 designs, plans, working drawings and specifications, and any arrangement or
92 commitment made for financing; but excluding submission of an application for
93 a certificate of need.

197.315. 1. Any person who proposes to develop or offer a new
2 institutional health service within the state must obtain a certificate of need from
3 the committee prior to the time such services are offered.

4 2. Only those new institutional health services which are found by the
5 committee to be needed shall be granted a certificate of need. Only those new
6 institutional health services which are granted certificates of need shall be
7 offered or developed within the state. No expenditures for new institutional
8 health services in excess of the applicable expenditure minimum shall be made
9 by any person unless a certificate of need has been granted.

10 3. After October 1, 1980, no state agency charged by statute to license or
11 certify health care facilities shall issue a license to or certify any such facility, or
12 distinct part of such facility, that is developed without obtaining a certificate of
13 need.

14 4. If any person proposes to develop any new institutional health care
15 service without a certificate of need as required by sections 197.300 to ~~[197.366]~~
16 **197.367**, the committee shall notify the attorney general, and he **or she** shall
17 apply for an injunction or other appropriate legal action in any court of this state
18 against that person.

19 5. After October 1, 1980, no agency of state government may appropriate
20 or grant funds to or make payment of any funds to any person or health care
21 facility which has not first obtained every certificate of need required pursuant
22 to sections 197.300 to ~~[197.366]~~ **197.367**.

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

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

29 8. Periodic reports to the committee shall be required of any applicant
30 who has been granted a certificate of need until the project has been

31 completed. The committee may order the forfeiture of the certificate of need upon
32 failure of the applicant to file any such report.

33 9. A certificate of need shall be subject to forfeiture for failure to incur a
34 capital expenditure on any approved project within six months after the date of
35 the order. The applicant may request an extension from the committee of not
36 more than six additional months based upon substantial expenditure made;
37 **provided, that such an extension shall not be granted for any approved**
38 **project for which no substantial capital expenditure has been incurred**
39 **within three years of the original approval date of the order. Any**
40 **applicant whose request for an extension is not granted under this**
41 **subsection shall be permitted to apply for a new certificate of need.**

42 10. Each application for a certificate of need must be accompanied by an
43 application fee. The time of filing commences with the receipt of the application
44 and the application fee. The application fee is one thousand dollars, or one-tenth
45 of one percent of the total cost of the proposed project, whichever is greater. All
46 application fees shall be deposited in the state treasury. Because of the loss of
47 federal funds, the general assembly will appropriate funds to the [Missouri health
48 facilities review] committee.

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

52 12. When a nursing facility shifts from a skilled to an intermediate level
53 of nursing care, it may return to the higher level of care if it meets the licensure
54 requirements, without obtaining a certificate of need.

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

57 14. A certificate of need shall not be required for the transfer of ownership
58 of an existing and operational health facility in its entirety.

59 15. A certificate of need may be granted to a facility for an expansion, an
60 addition of services, a new institutional service, or for a new hospital facility
61 which provides for something less than that which was sought in the application.

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

67 operated by the state and licensed under this chapter, except for department of
68 mental health state-operated psychiatric hospitals.

69 17. Notwithstanding other provisions of this section, a certificate of need
70 may be issued after July 1, 1983, for an intermediate care facility operated
71 exclusively for the intellectually disabled.

72 18. To assure the safe, appropriate, and cost-effective transfer of new
73 medical technology throughout the state, a certificate of need shall not be
74 required for the purchase and operation of[:

75 (1) Research equipment that is to be used in a clinical trial that has
76 received written approval from a duly constituted institutional review board of
77 an accredited school of medicine or osteopathy located in Missouri to establish its
78 safety and efficacy and does not increase the bed complement of the institution
79 in which the equipment is to be located. After the clinical trial has been
80 completed, a certificate of need must be obtained for continued use in such
81 facility; or

82 (2) Equipment that is to be used by an academic health center operated
83 by the state in furtherance of its research or teaching missions] **any major**
84 **medical equipment used for the provision of medical or other health**
85 **services.**

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

11 2. A member of the general assembly who also serves as a member of the
12 health facilities review committee is prohibited from soliciting or accepting
13 campaign contributions from any applicant or person speaking for an applicant
14 or any opponent to any application or persons speaking for any opponent while
15 such application is pending before the health facilities review committee. **No**
16 **person or entity regulated by chapters 197 or 198 or any officer,**
17 **attorney, agent, lobbyist, or employee thereof, shall initiate, participate**

18 **in, or undertake, directly or indirectly, an ex parte communication with**
19 **a committee member or any person employed as staff to the committee**
20 **or agency unless such communication is submitted or confirmed in**
21 **writing and made part of the certificate of need**
22 **application. Communications for the purposes of clarification of facts**
23 **and issues that may arise after an application has been deemed**
24 **complete and initiated by the agency or committee staff shall not be**
25 **prohibited so long as such communications are submitted or confirmed**
26 **in writing and made part of the application.**

27 3. Any person regulated by chapter 197 or 198 and any officer, attorney,
28 agent and employee thereof, shall not offer to any committee member or to any
29 person employed as staff to the committee, any office, appointment or position,
30 or any present, gift, entertainment or gratuity of any kind or any campaign
31 contribution while such application is pending before the [health facilities review]
32 committee. Any person guilty of knowingly violating the provisions of this section
33 shall be punished as follows: For the first offense, such person is guilty of a class
34 B misdemeanor; and for the second and subsequent offenses, such person is guilty
35 of a class E felony.

197.330. [1.] The committee shall:

2 (1) Notify the applicant within fifteen days of the date of filing of an
3 application as to the completeness of such application;

4 (2) Provide written notification to affected persons located within this
5 state at the beginning of a review. This notification may be given through
6 publication of the review schedule in all newspapers of general circulation in the
7 area to be served;

8 (3) Hold public hearings on all applications when a request in writing is
9 filed by any affected person within thirty days from the date of publication of the
10 notification of review;

11 (4) Within one hundred days of the filing of any application for a
12 certificate of need, issue in writing its findings of fact, conclusions of law, and its
13 approval or denial of the certificate of need; provided, that the committee may
14 grant an extension of not more than thirty days on its own initiative or upon the
15 written request of any affected person;

16 (5) Cause to be served upon the applicant, the respective health system
17 agency, and any affected person who has filed his prior request in writing, a copy
18 of the aforesaid findings, conclusions and decisions;

19 (6) Consider the needs and circumstances of institutions providing
20 training programs for health personnel;

21 (7) Provide for the availability, based on demonstrated need, of both
22 medical and osteopathic facilities and services to protect the freedom of patient
23 choice; and

24 (8) Establish by regulation procedures to review, or grant a waiver from
25 review, nonsubstantive projects.

26 The term "filed" or "filing" as used in this section shall mean delivery to the staff
27 of the [health facilities review] committee the document or documents the
28 applicant believes constitute an application.

29 [2. Failure by the committee to issue a written decision on an application
30 for a certificate of need within the time required by this section shall constitute
31 approval of and final administrative action on the application, and is subject to
32 appeal pursuant to section 197.335 only on the question of approval by operation
33 of law.]

208.225. 1. To implement fully the provisions of section 208.152, the MO
2 HealthNet division shall calculate the Medicaid per diem reimbursement rates
3 of each nursing home participating in the Medicaid program as a provider of
4 nursing home services based on its costs reported in the Title XIX cost report
5 filed with the MO HealthNet division for its fiscal year as provided in subsection
6 2 of this section.

7 2. The recalculation of Medicaid rates to all Missouri facilities will be
8 performed as follows: effective July 1, 2004, the department of social services
9 shall use the Medicaid cost report containing adjusted costs for the facility fiscal
10 year ending in 2001 and redetermine the allowable per-patient day costs for each
11 facility. The department shall recalculate the class ceilings in the patient care,
12 one hundred twenty percent of the median; ancillary, one hundred twenty percent
13 of the median; and administration, one hundred ten percent of the median cost
14 centers. Each facility shall receive as a rate increase one-third of the amount
15 that is unpaid based on the recalculated cost determination.

16 **3. Any intermediate care facility or skilled nursing facility, as**
17 **such terms are defined in section 198.006, participating in MO**
18 **HealthNet that incurs total capital expenditures, as such term is**
19 **defined in section 197.305, in excess of two thousand dollars per bed**
20 **shall be entitled to obtain from the MO HealthNet division a**
21 **recalculation of its Medicaid per diem reimbursement rate based on its**

22 **additional capital costs or all costs incurred during the facility fiscal**
23 **year during which such capital expenditures were made. Such**
24 **recalculated reimbursement rate shall become effective and payable**
25 **when granted by the MO HealthNet division as of the date of**
26 **application for a rate adjustment.**

 [197.366. The term "health care facilities" in sections
2 197.300 to 197.366 shall mean:
3 (1) Facilities licensed under chapter 198;
4 (2) Long-term care beds in a hospital as described in
5 subdivision (3) of subsection 1 of section 198.012;
6 (3) Long-term care hospitals or beds in a long-term care
7 hospital meeting the requirements described in 42 CFR, section
8 412.23(e); and
9 (4) Construction of a new hospital as defined in chapter
10 197.]

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Bill

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