

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2402

98TH GENERAL ASSEMBLY

5988H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 197.315 and 536.031, RSMo, and to enact in lieu thereof three new sections relating to administrative rules for the regulation of health care facilities, with an emergency clause for a certain section.

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

Section A. Sections 197.315 and 536.031, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 197.065, 197.315, and 536.031, to read as
3 follows:

**197.065. 1. The department of health and senior services shall promulgate
2 regulations for the construction and renovation of hospitals that include life safety code
3 standards for hospitals that exclusively reflect the life safety code standards imposed by
4 the federal Medicare program under Title XVIII of the Social Security Act and its
5 conditions of participation in the Code of Federal Regulations.**

**6 2. The department shall not require a hospital to meet the standards contained in
7 the Facility Guidelines Institute for the Design and Construction of Health Care Facilities
8 but any hospital that complies with the 2010 or later version of such guidelines for the
9 construction and renovation of hospitals shall not be required to comply with any
10 regulation that is inconsistent or conflicts in any way with such guidelines.**

**11 3. The department may waive enforcement of the standards for licensed hospitals
12 imposed by this section if the department determines that:**

**13 (1) Compliance with those specific standards would result in unreasonable
14 hardship for the facility and if the health and safety of hospital patients would not be
15 compromised by such waiver or waivers; or**

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 **(2) The hospital has used other standards that provide for equivalent design**
17 **criteria.**

18 **4. Regulations promulgated by the department to establish and enforce hospital**
19 **licensure regulations under this chapter that conflict with the standards established under**
20 **subsections 1 and 3 of this section shall lapse on and after January 1, 2018.**

21 **5. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
22 **created under the authority delegated in this section shall become effective only if it**
23 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
24 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
25 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
26 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
27 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**
28 **shall be invalid and void.**

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

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

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

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

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

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

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

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

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

31 10. Each application for a certificate of need must be accompanied by an application fee.
32 The time of filing commences with the receipt of the application and the application fee. The
33 application fee is one thousand dollars, or one-tenth of one percent of the total cost of the
34 proposed project, whichever is greater. All application fees shall be deposited in the state
35 treasury. Because of the loss of federal funds, the general assembly will appropriate funds to the
36 Missouri health facilities review committee.

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

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

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

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

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

50 16. The provisions of this section shall not apply to facilities operated by the state, and
51 appropriation of funds to such facilities by the general assembly shall be deemed in compliance
52 with this section, and such facilities shall be deemed to have received an appropriate certificate
53 of need without payment of any fee or charge. **The provisions of this subsection shall not**
54 **apply to hospitals operated by the state and licensed under chapter 197, except for**
55 **department of mental health state-operated psychiatric hospitals.**

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

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

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

66 (2) **Equipment that is to be used by an academic health center operated by the state**
67 **in furtherance of its research or teaching missions.**

68 536.031. 1. There is established a publication to be known as the "Code of State
69 Regulations", which shall be published in a format and medium as prescribed and in writing
70 upon request by the secretary of state as soon as practicable after ninety days following January
71 1, 1976, and may be republished from time to time thereafter as determined by the secretary of
72 state.

73 2. The code of state regulations shall contain the full text of all rules of state agencies
74 in force and effect upon the effective date of the first publication thereof, and effective
75 September 1, 1990, it shall be revised no less frequently than monthly thereafter so as to include
76 all rules of state agencies subsequently made, amended or rescinded. The code may also include
77 citations, references, or annotations, prepared by the state agency adopting the rule or by the
78 secretary of state, to any intraagency ruling, attorney general's opinion, determination, decisions,
79 order, or other action of the administrative hearing commission, or any determination, decision,
80 order, or other action of a court interpreting, applying, discussing, distinguishing, or otherwise
81 affecting any rule published in the code.

82 3. The code of state regulations shall be published in looseleaf form in one or more
83 volumes upon request and a format and medium as prescribed by the secretary of state with an
84 appropriate index, and revisions in the text and index may be made by the secretary of state as
85 necessary and provided in written format upon request.

86 4. An agency may incorporate by reference rules, regulations, standards, and guidelines
87 of an agency of the United States or a nationally or state-recognized organization or association
88 without publishing the material in full. The reference in the agency rules shall fully identify the
89 incorporated material by publisher, address, and date in order to specify how a copy of the
90 material may be obtained, and shall state that the referenced rule, regulation, standard, or
91 guideline does not include any later amendments or additions; **except that, hospital licensure**
92 **regulations governing life safety code standards promulgated under this chapter and**
93 **chapter 197 to implement section 197.065 may incorporate, by reference, later additions**
94 **or amendments to such rules, regulations, standards, or guidelines as needed to consistently**

95 **apply current standards of safety and practice.** The agency adopting a rule, regulation,
96 standard, or guideline under this section shall maintain a copy of the referenced rule, regulation,
97 standard, or guideline at the headquarters of the agency and shall make it available to the public
98 for inspection and copying at no more than the actual cost of reproduction. The secretary of state
99 may omit from the code of state regulations such material incorporated by reference in any rule
100 the publication of which would be unduly cumbersome or expensive.

101 5. The courts of this state shall take judicial notice, without proof, of the contents of the
102 code of state regulations.

Section B. Because immediate action is necessary to preserve access to quality health
2 care facilities for the citizens of Missouri, the repeal and reenactment of section 197.315 of
3 section A of this act is deemed necessary for the immediate preservation of the public health,
4 welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of
5 the constitution, and the repeal and reenactment of section 197.315 of section A of this act shall
6 be in full force and effect upon its passage and approval.

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