

FIRST REGULAR SESSION

SENATE BILL NO. 516

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2456S.011

AN ACT

To repeal section 197.318, RSMo, and to enact in lieu thereof one new section relating to certificates of need.

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Section A. Section 197.318, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 197.318, to read as follows: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. As used in this section, the term "licensed and available" means beds which are actually in place **and currently open and available to the public for immediate occupancy** and for which a license has been issued.

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

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

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

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

(a) Submitting a letter of intent to expand to the department of health and senior services and the health facilities review committee;

(b) Certification from the department of health and senior services that the **buyer's** facility:

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

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

20 and

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

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

28 (d) **Certification from the department of health and senior
29 services that the seller's facility:**

30 a. **Has beds that are licensed and available in an amount equal
31 to or more than the number of beds sought to be purchased by the
32 buyer;**

33 b. **Has maintained less than a sixty percent average occupancy
34 rate for the previous six quarters; and**

35 c. **Shall not increase its licensed and available beds until such
36 time as the average occupancy of facilities within a fifteen mile radius
37 exceeds eighty-five percent; and**

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

41 [(e)] (f) If no agreement is reached by the selling and purchasing entities,
42 the health facilities review committee shall permit an expansion for:

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

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

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

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

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

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

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

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

80 (1) The facility shall report to the health and senior services vacant beds
81 as unavailable for occupancy for at least the most recent four consecutive
82 calendar quarters;

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

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

91 6. Nothing in this section shall prohibit a health care facility licensed

92 pursuant to chapter 198 from being replaced in its entirety within fifteen miles
93 of its existing site so long as the existing facility and proposed or replacement
94 facility have the same owner or owners regardless of corporate or business
95 structure and the health care facility being replaced remains unlicensed and
96 unused for any long-term care services whether they do or do not require a license
97 from the date of licensure of the replacement facility.

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