

SECOND REGULAR SESSION

SENATE BILL NO. 898

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time January 16, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4961S.011

AN ACT

To repeal sections 197.305 and 197.318, RSMo, and to enact in lieu thereof two new sections relating to the occupancy rate of health care facilities.

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

Section A. Sections 197.305 and 197.318, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 197.305 and 197.318, to read as follows:

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

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

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

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

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

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

19 (6) "Expenditure minimum" shall mean:

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

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

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

35 (7) "Health service area", a geographic region appropriate for the effective
36 planning and development of health services, determined on the basis of factors
37 including population and the availability of resources, consisting of a population
38 of not less than five hundred thousand or more than three million;

39 (8) "Major medical equipment", medical equipment used for the provision
40 of medical and other health services;

41 (9) "New institutional health service":

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

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

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

49 (d) Predevelopment activities as defined in subdivision (12) hereof costing
50 in excess of one hundred fifty thousand dollars;

51 (e) Any change in licensed bed capacity of a health care facility licensed
52 under chapter 198 which increases the total number of beds by more than ten or
53 more than ten percent of total bed capacity, whichever is less, over a two-year
54 period, provided that any such health care facility seeking [a nonapplicability

55 review for] an increase in total beds or total bed capacity in an amount less than
56 described in this paragraph shall be eligible for such [review] **increase** only if
57 the facility has had no patient care class I deficiencies within the last eighteen
58 months and has maintained at least an eighty-five percent average occupancy
59 rate for the previous six quarters;

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

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

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

73 (11) "Person", any individual, trust, estate, partnership, corporation,
74 including associations and joint stock companies, state or political subdivision or
75 instrumentality thereof, including a municipal corporation;

76 (12) "Predevelopment activities", expenditures for architectural designs,
77 plans, working drawings and specifications, and any arrangement or commitment
78 made for financing; but excluding submission of an application for a certificate
79 of need.

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

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

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

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

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

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

16 (b) Certification from the department of health and senior services that
17 the facility:

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

20 b. Has maintained [a ninety-percent] **an eighty-five percent** average
21 occupancy rate for the previous six quarters;

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

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

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

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

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

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

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

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

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

57 (5) A facility licensed pursuant to chapter 198 may transfer or sell
58 individual long-term care licensed **and available** beds to facilities qualifying
59 pursuant to paragraphs (a) and (b) of subdivision (1) of this subsection. Any
60 facility which transfers or sells licensed **and available** beds shall not expand its
61 licensed bed capacity in that licensure category for a period of five years from the
62 date the licensure is relinquished **or until the average occupancy of**
63 **licensed and available beds in that licensure category within a fifteen-**
64 **mile radius is eighty-five percent for the previous six quarters. Any**
65 **facility that transfers or sells licensed and available beds shall have an**
66 **average occupancy rate of less than seventy percent for the previous**
67 **six quarters.**

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

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

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

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

84 stipulate the same in writing.

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

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Bill

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