MINUTES OF THE HUMAN SERVICES COMMITTEE MEETING
February 11, 1981

The Human Services Committee convened on Wednesday, February 11, 1981 in Room 103 of the Capitol, with CHAIRMAN BUDD GOULD presiding. All members were present except REP. BRAND and KEYSER who were excused.

HB 631
REP. KEEDY opened the hearing on HB 631. The bill is "an act to provide for reimbursement of certain volunteer providers of emergency medical services for the cost of professional training courses." He also presented the committee members with a Statement of Intent. (EXHIBIT I).

PROPONENTS:
DREW DAWSON, Chief of the Emergency Medical Services Bureau, Department of Health and Environmental Sciences (DHES) testified that in a rural state such as Montana, most of the emergency medical services are provided on a volunteer basis. He said that of the 900 EMTs in the state, approximately 80% are providing services on a volunteer basis, particularly their training and continuing education requirements. The first requirement is an 81 hour course; then the EMT must take a practical and a written exam given by the state health department. A person must travel to take the exam, and the cost of certification is $35, he said. Recertification must take place every two years. This bill is designed to reimburse the individual for costs that are not borne by local governments, and which are incurred in obtaining the training. He explained that the "first responder training," authorized by the state and soon to begin, involves a lower level training designed mostly for fire department and law enforcement personnel. Another level is the advanced EMTs who administer I.V.s and medication. He urged support of the bill.

JERRY LOENDORF of the MMA, encouraged support of this bill.

OPPONENTS:
JOHN BAINES, a registered nurse and an EMT who works for an ambulance service, feels this bill is not restrictive enough. He feels that tax dollars will be paying for the training of those who make their living by working as an EMT, and stated that there is no limit to the number of persons who could take the training.

LLOYD LINDEN, ambulance service owner, opposed the bill saying that the ambulance services should pay for this training, and that the services should be allowed to charge higher rates, so that "user fees" could pay for the training.

LINDA ZESING, a volunteer EMT from Whitehall, said she felt volunteer EMTs should receive at least a minimum wage. She told of the ambulance service in the Whitehall area having all-trained EMT's and that all equipment was paid for through donations. She said that some of their volunteers have been unable to be recertified because of family or job responsibilities and that this bill could have adverse affects on their ambulance service by

demanding the recertification.

QUESTIONS FROM THE COMMITTEE:
REP. BENNETT asked if there were any persons mentioned in Section 1 (a) who didn't receive any insurance or retirement benefits through their volunteer services. MR. DAWSON stated that this bill did not apply in that regard. REP. BENNETT said that the EMTs are trained through their association with the volunteer fire department and that they are covered by those benefits. MR. DAWSON said various departments handle this in various ways. LINDA ZESING said that the Whitehall volunteers are covered by Worker's Compensation, as they are paid for time spent driving.

REP. WINSLOW asked if there were tax deductions for volunteer driving to and from accidents. REP. KEEDY didn't know. REP. WINSLOW asked if these people were training and work, weren't they now state employees. MR. DAWSON said the volunteers would not be paid for the time spent during training, but the training itself would be paid for.

REP. WINSLOW asked if volunteer firefighters were reimbursed. DAVE FISHER, a volunteer firefighter, said that none of them have been reimbursed that he knows of. REP. NILSON said the salaried firemen in Great Falls are becoming alienated from the EMT program because they are not being reimbursed for their required training time and expenses. He asked MR. DAWSON if the DHES wanted to further alienate them. MR. DAWSON felt there may be some misunderstanding, that this bill applies only to volunteers, and only to reimbursement, not remuneration. The reimbursement is only for expenses incurred by the training.

REP. PAVLOVICH asked REP. KEEDY, how many would be involved. REP. KEEDY said there were about 900 EMTs in the state. REP. BARDANOUVE asked how this program would be paid for. REP. KEEDY said that it would be a General Fund appropriation. REP. MANNING asked for figures. REP. KEEDY said that it was estimated to cost $186,000 in 1982 and $183,000 in 1983, and felt the program would not be difficult to administer.

REP. KEEDY closed the hearing on HB 631.

HB 632
REP. SIVERTSEN opened the hearing, saying this bill was requested by the Department of Institutions, to require formulation of a county alcohol treatment and prevention plan annually. He called attention to the change in the law on page 1, line 12, substitution "of each year", which would clarify the intent of the legislation, he said.

PROPONENTS:
MIKE MURRAY of the Department of Institutions supported the bill. He said that, in 1982, by statute, there will be $1.6 million available at the county level for treatment. In the fiscal year of 1983, there will be $1.8 million, he said. The only way the Department of Institutions has of monitoring the way these funds

is review of the plans submitted by the county, according to MURRAY. He urged passage of the bill.

DICK BOMBAGER, representing the AA, supported the bill saying that it would maintain the accountability for the program.

OPPONENTS: There were none.

QUESTIONS FROM THE COMMITTEE:
REP. SEIFERT asked who formulated and approved these county plans, and asked if the alcohol councils on reservations work with tribal councils. MR. MURRAY said the plans must all be approved by the County Commissioners. They also designate the amount of money used on reservations, he said. REP. SEIFERT asked if the county commissioners helped set up programs where federal and state money is used. MR. MURRAY said the county commissioners may contract with the state-approved plan at the local level. Currently, there are three reservations that have state-approved programs. The Flathead Reservation program receives all of Lake County's money, the Medicine Pine Lodge at Browning, receives half of Glacier County's money, and the Fort Belnap Reservation receives no county money. Those are the only reservation programs. He said the money is sent directly to the county on a quarterly basis.

REP. BARDANOUVE said the law specified January 1, 1980, and he wanted to know the situation for 1981. MR. MURRAY said that one county questioned the Department of Institution's right to demand a county plan. The attorney for the Department of Institutions is of the opinion that, as of June, 1981, the county plan provision totally expires, said MR. MURRAY, explaining the importance of passing HB 632.

REP. SIVERTSEN closed the hearing on HB 632.

EXECUTIVE SESSION:
REP. SEIFERT moved that HB 632 DO PASS, and that it be placed on the Consent Calendar. The motion was seconded and PASSED UNANIMOUSLY.

HB 631
REP. SEIFERT moved that HB 631 DO NOT PASS. The bill was seconded and PASSED with the following representatives opposing: METCALF, MANNING and MENAHAN.

HB 258 and HJR 1
REP. SEIFERT reported that the study is nearly completed.

HB 514
REP. CONN asked if action on the bill could be further postponed. CHAIRMAN GOULD felt the committee should take action at this time.

REP. SIVERSTSEN moved for a DO NOT PASS.

The committee discussed several aspects of this bill and finally decided that a vote should be taken. A roll call vote was taken and the MOTION PASSED by a vote of 9 to 6, with 2 absent. Those voting NO were REPRESENTATIVES GOULD, CONN, BARDANOVE, MANNING, NILSON, MENAHAN.

REP. BARDANOUVE asked what present Montana law makes the practice of midwifery illegal. RUSS JOSEPHSON, legal counsel for the committee, said that Title 37 deals with the licensing and practice of medicine; he also, said that a list of exemptions including a nurse-midwife is mentioned in that statute. However, a lay-midwife is not exempted, and is therefore, practicing medicine without a license, he said.

REP. BARDANOUVE felt the committee might be "sticking its head in the sand", by either not licensing midwifery and improving the care given by midwives, or completely outlawing the practice.

REP. METCALF said that there already is a law allowing nurse-midwives to deliver babies. REP. WINSLOW stated that birthing centers are presently in operation in many states. He said there is a real problem in rural areas where there is no doctor and the ambulance drivers only have first aid training. REP. SIVERTSEN said that a doctor called upon after a crisis has occurred during a midwife delivery, might find a serious situation had developed by that time, and yet could be liable for malpractice.

"CERTIFICATE OF NEED" BILLS: (HB 513 and HB 458)
REP. GOULD asked for a consensus on the Certificate of Need bills. He felt that in the case of nursing homes, the CON is viable but that in other areas it was not viable. He wondered if the problem should be addressed by a committee bill. REP. SIVERTSEN felt that even CONs for the nursing homes might be looked at a little more closely.

REP. GOULD felt there should be control over the nursing homes. REP. BARDANOUVE said that under SRS regulations, Montana guarantees every nursing home 80% occupancy. When a nursing home falls 5 beds below the 80%, Montana pays the nursing home, he said. At the present, according to REP. BARDANOUVE, Montana is overbuilt on nursing homes, because all the County Commissioners want one in each community. This increases the cost of Medicaid, he said. REP. SEIFERT wondered if CON was the only way Montana had of controlling the number of beds built. CHAIRMAN GOULD said that he thought so. (Section 11.22 of the Social Security Act, also exercises some control, according to a unidentified representative of nursing homes.) REP. SIVERTSEN felt that the Medicaid payments to nursing homes should be scrutinized. REP. WINSLOW felt the margin of profit for nursing homes was low and he didn't expect a proliferation of nursing home. REP. PAVLOVICH stated that he felt CT scanners would save more lives if available to more cities.

REP. MENAHAN said there are documented abuses of doctors' and hospitals' use of CT scanners, in order to pay for the equipment. REP. WINSLOW said he felt that the CON has encouraged hospitals to buy equipment. REP. GOULD said that if a committee bill is drawn up, it would have to be introduced by the 35th day. He felt that the committee should authorize RUSS JOSEPHSON to draw up a bill proposing the CON be on the nursing homes only, and then have the committee consider all three possibilities. REP. METCALF said the place where a CON is needed is where two hospitals located in the same area are competing, where they both want to have the best facility.

REP. GOULD asked the committee to seriously consider all possibilities.

The meeting was adjourned.

BUDD GOULD, Chairman

rj

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

ILL HB 631 ______________ Date 2-11-?

NSOR ______________

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Lloyd Linden	314 N Rodney Helena, Mt	Linden Ambulance		✓
Lynda [illegible]	302 2nd W Whitehall Mt	Self - Whitehall Amb.		✓
John [illegible] RN	136 7th ave. Helena, Mt	Linden Amb.		✓
Evelyn E. [illegible]	Helena	Self		✓
[illegible]	"	[illegible]	✓	
Marty Elson	Msla	Mt Nurses Assoc.		—

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-34

NAME Mary Lou Fitzgerald BILL No. 631

ADDRESS 1805 Poplar DATE 2/11/81

WHOM DO YOU REPRESENT self

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am observing only

Mary D. Fitzgerald
Helena -
observing the committee deliberations

Carroll College Senior Nursing Students observing
Linda Lee Smart
2. Cheryl M. Briggs
3. Jan Jewell
4. Maureen Meister

rm CS-34
79

NAME Michael Murray BILL No. 632

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT State Dept. of Inst. Alcohol & Drug

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

2-11-81 EX. I

Statement of Intent - HB 631

A statement of intent is required for this bill because it contains rulemaking authority in section 3.

The intent of this bill is to provide some relief from the costs associated with their volunteer activities to emergency medical volunteers who give of themselves extensively, both personally and through volunteer organizations. These volunteers periodically must take continuing education courses to remain current in their certifications and to increase their knowledge of emergency medicine. They are presently required to pay for the courses in addition to the donation of their time, personal efforts, and other associated sacrifices. This bill is intended to decrease the burden these volunteers carry by providing for the reimbursement of their costs for such education, if specific criteria are met. It is intended to assist emergency medical volunteers who are an indispensable part of emergency medical services in Montana.

The rules required by the bill should address the considerations specified in section 3 in some detail so that it is abundantly clear:

(1) what courses qualify;

(2) who is eligible for reimbursement; and

(3) what amount he is entitled to receive.

The rules should make absolutely clear how the necessary decisions required by the bill are to be made so that the reimbursement program is implemented in a fundamentally fair and equitable way.

Draft of committee bill (1)

Part 1

General Provisions

50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, ~~health care~~ long-term care facilities located in the geographic area affected by the application, agencies which establish rates for ~~health care~~ long-term care facilities, and agencies which plan or assist in planning for such facilities, ~~including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.~~

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(6) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(13) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(16) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

~~(18) "New institutional health services" means:~~

~~(a) the construction, development, or other establishment of a health care facility which did not previously exist;~~

~~(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.~~

~~(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;~~

~~(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;~~

~~(e) the expansion of a geographic service area of a home health agency.~~

(18) ~~(19)~~ "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(19) ~~(20)~~ "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(20) ~~(21)~~ "Offer" means the holding out by a health care facility that it can provide specific health services.

(21) ~~(22)~~ "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(22) ~~(23)~~ "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(23) ~~(24)~~ "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(24) ~~(25)~~ "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(25) ~~(26)~~ "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(26) ~~(27)~~ "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(27) ~~(28)~~ "State plan" means the state medical facility plan provided for in part 4.

50-5-103. Rules and standards. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

50-5-108. Injunction. The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.

50-5-109. Penalty. A person who violates provisions of parts 1 or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense.

Part 2

Licensing

50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less--$20;
(2) facilities with 21 beds or more--$1 per bed.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.~~

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the board.

(3) The decision of the board is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-210 through 50-5-220 reserved.

50-5-221. Civil penalty -- injunction. (1) A person who violates the terms of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of this part, in addition to or exclusive of the remedy in subsection (1).

Part 3

Construction or Expansion, ~~or Alteration~~

50-5-301. When application is required. Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

~~(1) a new institutional health service as defined in 50-5-101;~~

~~(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans, working drawings, specifications, studies, and surveys.~~

(1) The construction of a new long-term care facility;

(2) The addition of beds to an existing long-term care facility over a two year period, if that addition exceeds ten beds or 10% of the total licensed bed capacity, whichever is less.

50-5-302. Application and review process. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. The department shall notify the applicant and affected persons of its decision.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-304. Review criteria, required findings, and standards. The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

~~(1) the relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;~~

~~(2) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;~~

(1) ~~(3)~~ the need that the population served or to be served by the services has for the ~~services;~~ additional long-term care beds

~~(4) the availability of less costly quality equivalent or more effective alternative methods of providing such services;~~

(5) ~~the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;~~

(6) ~~the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;~~

(7) ~~the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;~~

(8) ~~the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;~~

(9) ~~the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.~~

(10) ~~the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the PUBLIC Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.~~

(11) ~~the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;~~

(12) ~~in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;~~

(13) ~~the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and~~

(14) ~~any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.~~

(2) The immediate and long-term Financial Feasibility of the proposal for additional long-term care beds as well as the probable impact such additional beds would have on the costs and charges of the person proposing the additional beds

(3) The immediate and long-term impact of the proposed new long-term care beds on the costs and charges of other long-term care facilities in the same service area.

(4) The relationship of the proposed new long-term care beds proposal to the bed need estimates in the State Health Plan

50-5-305. Period of validity of approved application. A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension.

50-5-306. Right to hearing and appeal. (1) The applicant ~~or a health systems agency designated pursuant to Title XV of the Public Health Service Act~~ may request and shall be granted for good cause a public hearing before the department to reconsider its decision, if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.

(2) An aggrieved applicant ~~or a health systems agency designated pursuant to Title XV of the Public Health Service Act~~ may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures.

50-5-307. Civil penalty -- injunction. (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the ~~health~~ long term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the ~~health~~ long term care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).

50-5-308. Special circumstances. In the event of destruction of any part of a ~~health~~ long term care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

Part 4

State Plan -- Federal Aid

No Changes

Part 4

State Plan -- Federal Aid

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

50-5-403. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts and provide for the construction, maintenance, and operation in the order of relative need determined by the department.

History: En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. Duties of department. The department shall:

(1) prescribe minimum standards for the maintenance and operation of health care facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related health care facilities;

(3) survey the need for construction or alteration of health care facilities;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit health care facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out this part;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably available to all persons;

(8) submit to federal agencies state plans, including those for the health care facilities construction program and modifications of it providing for the establishment and operation of health care facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are

History: En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate health care facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

50-5-406. Federal funds. (1) The department may accept federal funds.

(2) All federal funds received shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government.

(3) The department shall transmit federal funds to applicants for work performed or purchases made in carrying out approved projects. Claims for all payments shall be approved by the department.

History: En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

50-5-407. Publicity as to plans and hearing. Before submitting plans to a federal agency, the department shall give adequate publicity including a general description of the plans and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. Applications for construction projects. Applications for health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a health care facility.

History: En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. Hearing on denial of application. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-410. Forwarding of application. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application complies with state and federal requirements and conforms to the state plan, the department shall forward the application to the appropriate federal agency.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single health care facility or health center serving each of tne counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a health care facility, health care facility construction, issuance of bonds, or method of operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity;

(2) "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502 Refusal by hospital or health care facility to particpate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).