

SENATE BILL NO. 100

INTRODUCED BY NORMAN, MENAHAN

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

January 15, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
January 16, 1979	Fiscal note requested.
January 22, 1979	Fiscal note returned.
February 14, 1979	Committee recommend bill do pass as amended. Report adopted.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	In accordance with joint rule 11-3-1, Statement of Intent was distributed to all Senators prior to second reading. Second reading, do pass.
February 19, 1979	Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Human Services.
March 8, 1979	Committee recommend bill be concurred in. Report adopted.

March 12, 1979

Second reading, concurred in.

March 15, 1979

Third reading, concurred in.

IN THE SENATE

March 16, 1979

Returned from second house.
Concurred in. Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 100
2 INTRODUCED BY Norman - Manahan

3 BY REQUEST OF
4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
7 RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE
8 FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH
9 AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING
10 LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A
11 CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR
12 CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING
13 GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH
14 CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES;
15 AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106,
16 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301,
17 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404,
18 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING
19 SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303,
20 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 50-5-101, MCA, is amended to read:
24 "50-5-101. Definitions. As used in parts 1 through 3 of
25 of this chapter, unless the context clearly indicates

1 otherwise, the following definitions apply:

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

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

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

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

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

24 (6) "Construction" means the erection, expansion,
25 remodeling, or alteration of a new or existing facility, the

1 ~~capital expenditure for which amounts to \$50,000 or more in~~
 2 ~~any 12-month period or any substantial change in services,~~
 3 ~~any increase or decrease in the number of beds in excess of~~
 4 ~~10% of the licensed capacity of the facility or in excess of~~
 5 ~~10 beds, whichever is the lesser, or any purchase of~~
 6 ~~therapeutic or diagnostic equipment (excluding replacement~~
 7 ~~of existing equipment) in any 12-month period at a cost~~
 8 ~~exceeding 2% of the facility's total operating costs for the~~
 9 ~~most recently completed fiscal year up to a maximum of~~
 10 ~~\$100,000 or exceeding \$10,000, whichever is larger. All~~
 11 ~~exemptions from this definition must nevertheless be~~
 12 ~~consistent with the state medical facilities plan of the~~
 13 ~~department.~~

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

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

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

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

25 (10) "Health care facility" means a hospital,

1 ~~hospital-related facility, or long-term care facility, any~~
 2 ~~institution, building, or agency or portion thereof, private~~
 3 ~~or public, excluding federal facilities, whether organized~~
 4 ~~for profit or not, used, operated, or designed to provide~~
 5 ~~health services, medical treatment, or nursing,~~
 6 ~~rehabilitative, or preventive care to any person or persons.~~
 7 ~~The term does not include offices of private physicians or~~
 8 ~~dentists. The term includes but is not limited to ambulatory~~
 9 ~~surgical facilities, health maintenance organizations, home~~
 10 ~~health agencies, hospitals, infirmaries, kidney treatment~~
 11 ~~centers, long-term care facilities, mental health centers,~~
 12 ~~outpatient facilities, public health centers, rehabilitation~~
 13 ~~facilities, and adult day-care centers.~~

14 (11) "Health maintenance organization" means a public
 15 or private organization organized as defined in 42 U.S.C.
 16 300e, as amended.

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

24 (13) "Hospital" means a health-care facility
 25 licensed by the department to provide providing, by or under

1 the supervision of licensed physicians, services for medical
 2 diagnosis, treatment, rehabilitation, and care of injured,
 3 disabled, or sick persons. Services provided may or may not
 4 include obstetrical care, emergency care, or any other
 5 service as allowed by state licensing authority. A health
 6 ~~care facility in order to be licensed as a hospital must~~
 7 ~~have~~ has an organized medical staff ~~provide~~ which is on
 8 call and available within 20 minutes, 24 hours per day, 7
 9 days per week, and provides 24-hour nursing care by licensed
 10 professionals registered nurses and be in compliance with
 11 the rules for licensed hospitals adopted by the department.
 12 This term includes hospitals specializing in providing
 13 health services for psychiatric, mentally retarded, and
 14 tubercular patients.

15 ~~(7) "Hospital-related facility" means a facility~~
 16 ~~licensed by the department to provide diagnosis, treatment,~~
 17 ~~medical or nursing care, or medically related rehabilitation~~
 18 ~~services. Such facilities include but are not limited to~~
 19 ~~outpatient facilities, public health centers, rehabilitation~~
 20 ~~facilities, long-term care facilities, infirmaries, mental~~
 21 ~~health and mental retardation institutions, alcoholism, and~~
 22 ~~drug dependency centers, and half-way houses. A health care~~
 23 ~~facility, in order to be licensed as a "hospital-related~~
 24 ~~facility" shall be in compliance with the regulations for~~
 25 ~~the specific category of facility adopted by the department.~~

1 ~~(8)(14) "Infirmery" means a facility located in a~~
 2 ~~university, college, government institution, or industry for~~
 3 ~~the treatment of the sick or injured, with the following~~
 4 ~~subdefinitions:~~

5 ~~(9)(a) an "infirmery-A" "infirmery-A" provides~~
 6 ~~outpatient and inpatient care;~~

7 ~~(10)(b) an "infirmery-B" "infirmery-B" provides~~
 8 ~~outpatient care only.~~

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

12 ~~(11)(16) (a) "Long-term care facility" means a place~~
 13 ~~facility or part thereof which provides skilled nursing care~~
 14 ~~or intermediate nursing care to a total of two or more~~
 15 ~~persons or personal care to more than three persons who, by~~
 16 ~~reason of illness or disability, are unable to properly care~~
 17 ~~for themselves and are not related to the owner or~~
 18 ~~administrator by blood or marriage and includes the~~
 19 ~~facilities defined as follows, with these degrees of care~~
 20 ~~defined as follows:~~

21 ~~(i) "Skilled nursing facilities" are establishments~~
 22 ~~furnishing continuous skilled nursing care and related~~
 23 ~~services 24 hours a day care" means the provision of nursing~~
 24 ~~care services, health-related services, and social services~~
 25 ~~under the supervision of a licensed registered nurse on a~~

1 24-hour basis.

2 (ii) ~~"Intermediate nursing care" facilities--A--are~~
 3 ~~establishments furnishing limited skilled nursing care and~~
 4 ~~personal care means the provision of nursing care services,~~
 5 ~~health-related services, and social services under the~~
 6 ~~supervision of a licensed nurse to patients not requiring~~
 7 ~~24-hour nursing care.~~

8 (iii) ~~"Intermediate care facilities--B" are~~
 9 ~~establishments providing only personal care and services to~~
 10 ~~residents. "Personal care" means the provision of services~~
 11 ~~and care which do not require nursing skills to residents~~
 12 ~~needing some assistance in performing the activities of~~
 13 ~~daily living.~~

14 (iv) ~~"Combination facilities" are establishments~~
 15 ~~providing two or more of the following services: skilled~~
 16 ~~nursing care and intermediate care--A and B.~~

17 (b) Hotels, motels, boardinghouses, boarding homes,
 18 roominghouses, or similar accommodations providing for
 19 transients, students, or persons not requiring institutional
 20 health care are not considered to be long-term care
 21 facilities.

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

1 services.

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

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

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

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

22 (d) health services which are offered in or through a
 23 health care facility and which were not offered on a regular
 24 basis in or through such health care facility within the
 25 12-month period prior to the time such services would be

1 offered or the deletion by a health care facility of a
 2 service previously offered;

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

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

8 {12}{20} "Observation bed" is means a bed used occupied
 9 for not more than 6 hours by a patient recovering from
 10 surgery or other treatment.

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

13 {13}{22} "Outpatient facility—A" means a—physically
 14 separate—component—of—a—licensed—hospital—or—a—medical
 15 clinic—or—other—establishment—owned—or—operated—by—a
 16 licensed—physician—which—has—an—observation—bed—or—beds—and
 17 provides—to—patients—not—requiring—hospitalization—the
 18 services—of—persons—licensed—to—practice—medicine—or
 19 dentistry—in—the—state—of—Montana—No—patient—may—be—allowed
 20 to—remain—in—an—outpatient—facility—for—more—than—6—hours—a
 21 facility, located in or apart from a hospital, providing
 22 under the direction of a licensed physician, either
 23 diagnosis or treatment, or both, to ambulatory patients in
 24 need of medical, surgical, or mental care. An out patient
 25 facility may have observation beds.

1 {14} "Outpatient facility—B" means a facility operated
 2 physically apart from a hospital, other than a medical
 3 clinic or other establishment owned or operated by a
 4 licensed physician, which provides to ambulatory patients
 5 not requiring hospitalization the services of persons
 6 licensed to practice medicine or dentistry in Montana, but
 7 which does not have an observation bed or beds as defined in
 8 subsection {12}.

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

11 {15}{24} "Person" means an individual, firm,
 12 partnership, association, organization, agency, institution,
 13 corporation, trust, estate, or governmental unit, whether
 14 organized for profit or not.

15 {16}{25} "Public health center" means a publicly owned
 16 facility utilized by a local health unit for the provision
 17 providing of public health services, including related
 18 public facilities such as laboratories, clinics, and
 19 administrative offices operated in connection with a public
 20 health center.

21 {17}{26} "Rehabilitation facility" means a facility
 22 providing community service which is operated for the
 23 primary purpose of assisting in the rehabilitation of
 24 disabled persons through an integrated program under
 25 competent professional supervision, including medical

1 ~~services--and--evaluation--and--psychological--social--and~~
 2 ~~vocational--services--and--evaluation~~ by providing
 3 comprehensive medical evaluations and services
 4 psychological and social services, or vocational evaluation
 5 and training or any combination of these services and in
 6 which the major portion of the services is furnished within
 7 the facility.

8 ~~(18)(27)~~ "Resident" means a person who is in a
 9 long-term care facility ~~as a patient or for intermediate or~~
 10 personal care.

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

13 Section 2. Section 50-5-103, MCA, is amended to read:

14 "50-5-103. Rules and standards. (1) The department
 15 shall promulgate ~~and adopty and publish~~ rules and minimum
 16 standards ~~for licensure of all hospitals and~~
 17 ~~hospital-related facilities for implementation of parts 1~~
 18 through 4.

19 ~~(2) Rules relating to building, equipment, and fire~~
 20 ~~and life safety shall be covered by the state building code.~~
 21 Any facility covered by this chapter shall comply with the
 22 state and federal requirements relating to construction,
 23 equipment, and fire and life safety.

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

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

12 Section 4. Section 50-5-105, MCA, is amended to read:

13 "50-5-105. Discrimination ~~among patients of physicians~~
 14 prohibited. (1) All phases of the operation of a health care
 15 facility shall be without discrimination against anyone on
 16 the basis of race, creed, religion, color, national origin,
 17 sex, age, marital status, physical or mental handicap, or
 18 political ideas.

19 ~~(2) No person who operates a facility may discriminate~~
 20 ~~among the patients of licensed physicians. The free and~~
 21 ~~confidential professional relationship between a licensed~~
 22 ~~physician and patient shall continue and remain unaffected.~~
 23 ~~Physicians shall continue to have direction over their~~
 24 ~~patients."~~

25 Section 5. Section 50-5-106, MCA, is amended to read:

1 ~~"50-5-106. Information received confidentially. Records~~
 2 ~~and reports required of health care facilities --~~
 3 ~~confidentiality. Health care facilities shall keep records~~
 4 ~~and make reports as required by the department. Before~~
 5 ~~February 1 of each year, every licensed health care facility~~
 6 ~~shall submit an annual report for the preceding calendar~~
 7 ~~year to the department. The report shall be on forms and~~
 8 ~~contain information specified by the department. Information~~
 9 ~~received by the department or board through reports,~~
 10 ~~inspection inspections, or provisions of parts 1 through 3~~
 11 ~~and 2 may not be disclosed in a way which would identify~~
 12 ~~individuals or facilities except in a proceeding involving~~
 13 ~~the question of licensure or as required by the federal~~
 14 ~~government for certification or preparation of a state plan~~
 15 ~~patients. Information and statistical reports from health~~
 16 ~~care facilities which are considered necessary by the~~
 17 ~~department for health planning and resource development~~
 18 ~~activities will be made available to the public and the~~
 19 ~~health planning agencies within the state. Applications by~~
 20 ~~health care facilities for certificates of need and any~~
 21 ~~information relevant to review of these applications,~~
 22 ~~pursuant to part 3, shall be accessible to the public."~~

23 Section 6. Section 50-5-108, MCA, is amended to read:

24 "50-5-108. Injunction. The department, on advice of
 25 the attorney general, may maintain bring an action for

1 injunction or other process against any person to restrain
 2 or prevent the establishment, conduct, management, or
 3 operation of a facility which is endangering health and
 4 welfare in violation of any provision of parts 1 or 4 of
 5 this chapter."

6 Section 7. Section 50-5-109, MCA, is amended to read:

7 "50-5-109. Penalty. A person who violates provisions
 8 of parts 1 through 3 or 4 is guilty of a misdemeanor. On
 9 conviction he shall be fined not more than \$100 for the
 10 first offense and not more than \$300 for each subsequent
 11 offense. Each day of a continuing violation after conviction
 12 is a separate offense."

13 Section 8. Section 50-5-201, MCA, is amended to read:

14 "50-5-201. License requirements. (1) A licensee who
 15 contemplates construction of or alteration or addition to a
 16 health care facility shall submit plans and specifications
 17 to the department for preliminary inspection and approval
 18 prior to commencing construction.

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

25 ~~(2)(1)~~ Upon discontinuance of the operation or of

1 transfer of ownership of a facility, the license must be
2 returned to the department.

3 ~~(3)~~(4) Licenses shall be displayed in a conspicuous
4 place near ~~where--patients--or--residents--are--admitted~~ the
5 admitting office of the facility."

6 Section 9. Section 50-5-204, MCA, is amended to read:

7 "50-5-204. Issuance and renewal of licenses. (1) On
8 receipt of a new or renewal application, the department or
9 its authorized agent shall inspect the facility. If minimum
10 standards are met and the proposed staff is qualified, the
11 department shall issue a license for 1 year. If minimum
12 standards are not met, the department may issue a
13 provisional license for less than 1 year if operation will
14 not result in undue hazard to patients or residents or if
15 the demand for accommodations offered is not met in the
16 community. The minimum standards which home health agencies
17 must meet in order to be licensed shall be as outlined in 42
18 U.S.C. 1395 x(1), as amended, and in rules implementing it
19 which add minimum standards.

20 (2) Licensed premises shall be open to inspection, and
21 access to all records shall be granted at all reasonable
22 times."

23 Section 10. Section 50-5-207, MCA, is amended to read:

24 "50-5-207. Denial, suspension, or revocation of
25 ~~hospital--or--hospital--related health care~~ facility license --

1 provisional license. (1) The department may deny, suspend,
2 or revoke a ~~hospital--or--hospital--related health care~~
3 facility license if ~~it--finds--there--has--been--substantial~~
4 ~~failure--to--comply--with--the--provisions--of--parts--1--through--3~~
5 any of the following circumstances exist:

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

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

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

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

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

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

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

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

25 (2) The department may reduce a license to provisional

1 status if as a result of an inspection it is determined
 2 minimum standards are not being met.

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

6 NEW SECTION. Section 11. Civil penalty -- injunction.

7 (1) A person who violates the terms of [Title 50, chapter 5,
 8 part 2.] is subject to a civil penalty not to exceed \$1,000.
 9 Each day of violation constitutes a separate violation. The
 10 department or, upon request of the department, the county
 11 attorney of the county where the health care facility in
 12 question is located may petition the district court to
 13 impose, assess, and recover the civil penalty. Money
 14 collected as a civil penalty shall be deposited in the state
 15 general fund.

16 (2) The department or, upon request of the department,
 17 the county attorney of the county where the health care
 18 facility in question is located may bring an action to
 19 enjoin a violation of any provision of [Title 50, chapter 5,
 20 part 2], in addition to or exclusive of the remedy in
 21 subsection (1).

22 Section 12. Section 50-5-301, MCA, is amended to read:

23 "50-5-301. ~~Preliminary submission of plans for~~
 24 ~~approval. When application is required, (i) The department~~
 25 ~~may adopt rules to require an applicant or licensee who~~

1 ~~contemplates construction of, alteration or addition to a~~
 2 ~~health care facility to submit plans and specifications to~~
 3 ~~the department for preliminary inspection and approval prior~~
 4 ~~to commencing construction.~~

5 ~~(2) Approval may be given only if the plans and~~
 6 ~~specifications conform to the state or the municipal~~
 7 ~~building code which applies to the facility. Unless an~~
 8 ~~application has been submitted to and a certificate of need~~
 9 ~~granted by the department, no person may initiate any of the~~
 10 ~~following:~~

11 (1) a new institutional health service as defined in
 12 50-5-101;

14 (2) any expenditure by or on behalf of a health care
 15 facility in excess of \$150,000 made in preparation for the
 16 offering or development of a new institutional health
 17 service and any arrangement or commitment made for financing
 18 the offering or development of the new institutional health
 19 service. Expenditures made in the preparation for the
 20 offering of a new institutional health service shall include
 21 expenditures for architectural designs, preliminary plans,
 22 working drawings, specifications, studies, and surveys."

23 Section 13. Section 50-5-302, MCA, is amended to read:

24 "50-5-302. ~~Form and content of application for~~
 25 ~~approval. Application and review process. (i) An application~~

~~for approval must be submitted to the department in a form together with information as the department may prescribe~~
~~(2) The application shall include~~
~~(a) a narrative description of the proposed project~~
~~(b) the number and type of beds and/or services to be provided~~
~~(c) the estimated cost~~
~~(d) the source of financing~~
~~(e) the expected time for completion of the proposed project and~~
~~(f) a simple line drawing showing major dimensions of the proposed project~~ (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. If the department fails to act within the designated period and an extension has not been granted, the failure to act constitutes disapproval of the application. The department shall notify the applicant and affected persons of its decision."
 Section 14. Section 50-5-304, MCA, is amended to read:
 "50-5-304. Requirements for approval Review criteria:
 required findings, and standards. (1) No application may be approved unless the action proposed
~~(a) is necessary to provide required health care in the area to be served~~
~~(b) can be economically accomplished and maintained~~

1 end

2 ~~(c) will contribute to the orderly development of~~

3 ~~adequate and effective health services~~

4 ~~(2) in making the determinations enumerated in~~

5 ~~subsection (1) the following shall be considered:~~

6 ~~(a) the compatibility with needs shown in the~~

7 ~~appropriate state plan provided by those statutes relating~~

8 ~~to facilities contained in part 4 of this chapter;~~

9 ~~(b) the availability of facilities or services which~~

10 ~~may serve as alternates or substitutes;~~

11 ~~(c) the need for special equipment and services in the~~

12 ~~area;~~

13 ~~(d) the possible economies and improvement in services~~

14 ~~to be anticipated from the operation of combined central~~

15 ~~services including but not limited to laboratory, research,~~

16 ~~radiology, pharmacy, laundry, and purchasing;~~

17 ~~(e) the adequacy of financial resources and sources of~~

18 ~~future revenues; and~~

19 ~~(f) the availability of sufficient manpower in the~~

20 ~~several professional disciplines. The department shall by~~

21 ~~rule promulgate and utilize, as appropriate, specific~~

22 ~~criteria for reviewing certificate of need applications~~

23 ~~under this chapter, including but not limited to the~~

24 ~~following considerations and required findings:~~

25 (1) the relationship of the health services being

1 reviewed to the applicable health systems plan and annual

2 implementation plan developed pursuant to Title XV of the

3 Public Health Service Act, as amended;

4 (2) the relationship of services reviewed to the

5 long-range development plans, if any, of the person providing

6 or proposing the services;

7 (3) the need that the population served or to be

8 served by the services has for the services;

9 (4) the availability of less costly or more effective

10 alternative methods of providing such services;

11 (5) the immediate and long-term financial feasibility

12 of the proposal as well as the probable impact of the

13 proposal on the costs of and charges for providing health

14 services by the person proposing the health service;

15 (6) the relationship and financial impact of the

16 services proposed to be provided to the existing health care

17 system of the area in which such services are proposed to be

18 provided;

19 (7) the availability of resources, including health

20 manpower, management personnel, and funds for capital and

21 operating needs for the provision of services proposed to be

22 provided and the availability of alternative uses of such

23 resources for the provision of other health services;

24 (8) the relationship, including the organizational

25 relationship, of the health services proposed to be provided

1 to ancillary or support services;

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

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

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

23 (12) in the case of a construction project, the costs
 24 and methods of the proposed construction, including the
 25 costs and methods of energy provision, and the probable

1 impact of the construction project reviewed on the costs of
 2 providing health services by the person proposing the
 3 construction project;

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

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

11 Section 15. Section 50-5-305, MCA, is amended to read:
 12 "50-5-305. Period of validity of approved application.
 13 ~~An approved application for construction is valid for 1 year~~
 14 ~~from the date of issue but may be extended by the department~~
 15 ~~for a period of 6 months. A certificate of need shall~~
 16 ~~terminate 1 year after the date of issuance unless:~~

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

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

25 Section 16. Section 50-5-306, MCA, is amended to read:

1 *50-5-306. Right to hearing and appeal. ~~{1}--if--the~~
 2 ~~department--disapproves--an--application--for--construction--of--a~~
 3 ~~facility--it--shall--notify--the--applicant--of--its--actions--and~~
 4 ~~afford--the--applicant--an--opportunity--to--request--a--hearing~~
 5 ~~before--the--board.~~

6 ~~{2}--When--this--hearing--is--desired--the--applicant--shall~~
 7 ~~notify--the--department--in--writing--within--15--days--after--the~~
 8 ~~notice--of--disapproval--is--received.~~

9 ~~{3}--If--the--decision--after--hearing--is--adverse--the~~
 10 ~~applicant--may--appeal--to--the--district--court--as--provided--in~~
 11 ~~Title 2, chapter 4, part 7. (1) Any affected person may, for~~
 12 ~~good cause, request the department to reconsider its~~
 13 ~~decision at a public hearing. The department shall grant the~~
 14 ~~request if the affected person submits the request in~~
 15 ~~writing showing good cause as defined in rules adopted by~~
 16 ~~the department and if the request is received by the~~
 17 ~~department within 30 calendar days after the decision is~~
 18 ~~announced. The public hearing to reconsider shall be held,~~
 19 ~~if warranted, within 30 calendar days after its request. The~~
 20 ~~department shall make its final decision and written~~
 21 ~~findings of fact and conclusions of law in support thereof~~
 22 ~~within 45 days after the conclusion of the reconsideration~~
 23 ~~hearing.~~

24 ~~{2} An aggrieved applicant or a health systems agency~~
 25 ~~designated pursuant to Title XV of the Public Health Service~~

1 Act may appeal the department's final decision to the board
 2 by filing a written notice of appeal stating the specific
 3 findings of fact and conclusions of law being appealed and
 4 the grounds. The notice of appeal must be received by the
 5 board within 30 calendar days after formal notice of the
 6 department's final decision was issued. The board shall give
 7 public notice of the appeal within 10 days, and the hearing
 8 shall be held within 30 days after receipt of the notice of
 9 appeal.

10 {3} The scope of the hearing before the board is
 11 limited to a review of the record upon which the department
 12 made its decision. Within 45 calendar days after the
 13 conclusion of the public hearing, the board shall make and
 14 issue its decision supported by written findings of fact
 15 and conclusions of law. The board may affirm the
 16 department's decision or remand it for further proceedings.
 17 The board may reverse or modify the department's decision if
 18 the appellant's rights have been prejudiced for any of the
 19 reasons found in 2-4-704.

20 {4} The final decision of the board shall be
 21 considered the decision of the department for purposes of an
 22 appeal to district court. Any affected person may appeal
 23 this decision to the district court as provided in Title 2,
 24 chapter 4, part 7.

25 {5} The department may by rule prescribe in greater

1 ~~detail the hearing and appellate procedures.~~"

2 Section 17. Section 50-5-307, MCA, is amended to read:

3 ~~"50-5-307. Penalties for failure to obtain prior~~
4 ~~approval Civil penalty -- injunction. Penalties for failure~~
5 ~~to obtain prior approval of the department are as follows:~~

6 ~~(1) Any person who constructs any new health care~~
7 ~~facility as defined in 50-5-101 without prior approval by~~
8 ~~the department is guilty of a misdemeanor and shall be~~
9 ~~punished by a fine of not less than \$1,000 or more than~~
10 ~~\$10,000, the fine to be deposited in the state general fund~~
11 ~~and this new facility is not eligible for licensure as a~~
12 ~~health care facility as defined in 50-5-101.~~

13 ~~(2) Any person who expends, remodels, or alters on~~
14 ~~existing health care facility as defined in 50-5-101 without~~
15 ~~prior written approval by the department is guilty of a~~
16 ~~misdemeanor and shall be punished by a fine of not less than~~
17 ~~\$1,000 or more than \$10,000, the fine to be deposited in the~~
18 ~~state general fund. (1) A person who violates the terms of~~
19 ~~59-5-301 is subject to a civil penalty of not less than~~
20 ~~\$1,000 or more than \$10,000. Each day of violation~~
21 ~~constitutes a separate offense. The department or, upon~~
22 ~~request of the department, the county attorney of the county~~
23 ~~where the health care facility in question is located may~~
24 ~~petition the district court to impose, assess, and recover~~
25 ~~the civil penalty. Money collected as a civil penalty shall~~

1 be deposited in the state general fund.

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

7 NEW SECTION. Section 18. Special circumstances. In
8 the event of destruction of any part of a health care
9 facility as a result of fire, storm, civil disturbance, or
10 any act of God, the department may issue a certificate of
11 need for only the replacement of the previously existing
12 facility or portion thereof.

13 Section 19. Section 50-5-402, MCA, is amended to read:

14 ~~"50-5-402. Administration of state medical facility~~
15 ~~plan. The department is the principal state agency for~~
16 ~~establishing and administering a statewide plan for~~
17 ~~construction, modernization, alteration, equipment,~~
18 ~~maintenance, or operation of a hospitality, medical, or related~~
19 ~~health care facility for provision of care, treatment,~~
20 ~~diagnosis, rehabilitation, training, or related service.~~
21 This plan is to be known as the state medical facility
22 plan."

23 Section 20. Section 50-5-404, MCA, is amended to read:

24 ~~"50-5-404. Duties of department. The department shall:~~
25 ~~(1) adopt necessary rules for the administration of~~

1 ~~this part~~

2 ~~(2)(1)~~ prescribe minimum standards for the maintenance
3 and operation of ~~hospital, medical, and related~~ health care
4 facilities receiving federal aid for construction under the
5 state plan;

6 ~~(3)(2)~~ inventory existing hospital, medical, and
7 related health care facilities;

8 ~~(4)(3)~~ survey the need for construction or alteration
9 of ~~hospital's~~ health care facilities;

10 ~~(5)(4)~~ develop and administer a state plan for the
11 construction and alteration of public and other nonprofit
12 ~~hospital, medical, and related~~ health care facilities;

13 ~~(6)(5)~~ if desirable, enter into agreements for the
14 utilization of facilities and services of other departments,
15 agencies, and institutions, public or private;

16 ~~(7)(6)~~ accept and deposit with the state treasurer and
17 spend any ~~grants, gifts, or contribution~~ made to meet costs of
18 carrying out this part;

19 ~~(8)(7)~~ prepare and review a construction program in
20 accordance with federal requirements that will provide
21 adequate ~~hospital, medical, and related~~ health care
22 facilities to people in the state providing, as far as
23 possible, for distribution throughout the state to make all
24 types of services reasonably ~~acceptable~~ available to all
25 persons;

1 ~~(9)(8)~~ submit to federal agencies state plans,
2 including those for the ~~hospital, medical, and related~~
3 health care facilities construction program and
4 modifications of it providing for the establishment and
5 operation of ~~hospital, medical, and related~~ health care
6 facilities construction activities in accordance with
7 federal requirements;

8 ~~(10)(9)~~ make application to the appropriate federal
9 agency for funds to assist in carrying out the survey and
10 planning activities;

11 ~~(11)(10)~~ after approval of a plan by the appropriate
12 federal agency, publish a description in newspapers having
13 general circulation throughout the state and make the plan
14 available upon request to all persons or organizations;

15 ~~(12)(11)~~ inspect construction or alteration projects
16 approved by the appropriate federal agency and, if
17 satisfactory, certify that work has been performed on the
18 project or purchases made in accordance with approved plans
19 and specifications and that payment of federal funds is due
20 to the applicant;

21 ~~(13)(12)~~ require reports and make inspections and
22 investigations as necessary or required by the federal
23 agency;

24 ~~(14)(13)~~ contract with consultants for services which
25 are performed on a part-time or fee-for-service basis not

1 involving administrative duties."

2 Section 21. Section 50-5-405, MCA, is amended to read:

3 "50-5-405. Contracts with federal agencies. The
4 department may enter into contracts and agreements with
5 agencies of the federal government to secure the benefit of
6 federal programs to provide adequate ~~medical--and--related~~
7 health care facilities and services."

8 Section 22. Section 50-5-408, MCA, is amended to read:

9 "50-5-408. Applications for construction projects.
10 Applications for ~~hospital--medical--and--related~~ health care
11 facilities construction projects may be submitted by a state
12 agency, a political subdivision, or by any public or
13 nonprofit agency authorized to construct and operate a
14 ~~hospital--medical--or--related~~ health care facility."

15 Section 23. Section 50-5-411, MCA, is amended to read:

16 "50-5-411. Consolidated applications. (1) Boards of
17 county commissioners of two or more counties may submit a
18 consolidated application for a single ~~hospital--medical~~
19 health care facility, or health center serving each of the
20 counties included in the application.

21 (2) Any statutes investing counties with powers to
22 construct, maintain, and operate ~~hospital--or--medical~~ health
23 care facilities directly or by lease or contract may be
24 utilized for this joint action.

25 (3) All statutes governing submission of questions of

1 establishing a ~~hospital--or--medical~~ health care facility,
2 ~~hospital--or--medical~~ health care facility construction,
3 issuance of bonds, or method of operation, and requiring a
4 majority vote of taxpayers on the questions shall apply.

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

9 Section 24. Saving clause. This act does not affect
10 certificate of need applications received and declared
11 complete or granted by the department before the effective
12 date of this act.

13 Section 25. Severability. If a part of this act is
14 invalid, all valid parts that are severable from the invalid
15 part remain in effect. If a part of this act is invalid in
16 one or more of its applications, the part remains in effect
17 in all valid applications that are severable from the
18 invalid applications.

19 Section 26. Codification. (1) It is intended that
20 section 11 of this act be codified as an integral part of
21 Title 50, chapter 5, part 2; and the provisions contained in
22 Title 50, chapter 5, parts 1 through 4, apply to section 11
23 of this act.

24 (2) It is intended that section 18 of this act be
25 codified as an integral part of Title 50, chapter 5, part 3;

LC 0249/01

1 and the provisions contained in Title 50, chapter 5, parts 1
2 through 4, apply to section 18 of this act.

3 Section 27. Repealer. Sections 50-5-102, 50-5-205,
4 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and
5 50-7-101 through 50-7-309, MCA, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 16-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 16, 19 79, there is hereby submitted a Fiscal Note for SB 100 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

Description of Proposed Legislation

An act to revise the laws relating to health care facilities.

Assumption

One additional FTE position is needed to handle the increased workload due to the proposed legislation.

Fiscal Impact

	<u>FY '80</u>	<u>FY '81</u>
Additional revenues due to proposed legislation	\$ -0-	\$ -0-
Less: Additional expenditures due to proposed legislation		
Personal services	24,332	25,790
Operating expenses	49,130	48,472
Equipment	800	-0-
	<u>74,262</u>	<u>74,262</u>
Net additional expenditures due to proposed legislation	<u>\$74,262</u>	<u>\$74,262</u>

Funding Information

General Fund	\$18,565	\$18,565
Federal and Private Revenue Fund	<u>55,697</u>	<u>55,697</u>
	<u>\$74,262</u>	<u>\$74,262</u>

Note: Spending authority has been requested in the Executive Budget in the above amounts.

Richard L. Drangor
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/22/79

1 STATEMENT OF INTENT RE: SB 100

2
3
4 A statement of intent is required for this bill because
5 it delegates rulemaking authority to the Department of
6 Health and Environmental Sciences. This bill is intended to
7 expand the authority of the Department of Health and
8 Environmental Sciences to license health care facilities in
9 order to cover additional health care facilities, and to
10 revise the requirements of specific health care facilities
11 to obtain a certificate of need. Generally the Department of
12 Health and Environmental Sciences is intended to have the
13 authority to amend and update existing licensure rules and
14 to adopt new rules for licensure to conform with the
15 mandates of P.L. 92-603 and the Social Security Act, titles
16 V, XVIII, and XIX.

17 In the same spirit, the Department may write and adopt
18 rules, in accordance with the Montana Administrative
19 Procedure Act, to insure the implementation of a state
20 certificate of need program which meets the minimum
21 standards of P.L. 93-641, the National Health Planning and
22 Resources Development Act, and which is acceptable to the
23 Secretary of the Department of Health, Education and
24 Welfare. This program is aimed at insuring that only new
25 institutional health services, expenditures in excess of

1 \$150,000 made to prepare for a new institutional health
2 service, or arrangements and commitments made to finance a
3 new institutional health service which are found by the
4 Department of Health and Environmental Sciences to be needed
5 may be granted a certificate of need and that only those
6 services which are granted a certificate of need may be
7 offered to the public.

8 Section 2 is the primary, broad-based source of
9 rulemaking authority for the entire chapter. Insofar as
10 licensing and certification of health care facilities are
11 concerned, Title 50, chapter 5, part 2, this section does
12 not add any new discretionary authority beyond that already
13 authorized for the Department, with the exception that this
14 section is intended to allow the setting of certification
15 standards for additional types of health care facilities,
16 such as health maintenance organizations and adult day care
17 centers not currently covered by law. This section is not
18 intended to expand the existing rulemaking authority under
19 part 4 except for rules specific to the additional health
20 care facilities that will be covered.

21 Section 2 is intended to clearly authorize rulemaking
22 authority to implement part 3. As a minimum, it is intended
23 that the Department may adopt rules covering the following:

24 1. procedures and assurances required by 42 CFR
25 123.401 through 42 CFR 123.411 and any subsequent rules

1 replacing or augmenting them;

2 2. procedures to be followed during the review
3 process, including any interrelationships with review being
4 conducted by a health systems agency; and

5 3. the effect on an application for certificate of
6 need if the Department fails to decide whether to approve or
7 disapprove the application within the time period set for
8 review.

9 Section 5 is intended to allow the Department to
10 require health care facilities to keep records and file
11 reports with the Department containing information relevant
12 to licensing, certification, statewide health planning, and
13 resources development.

14 Section 9 is not intended to be construed to add new
15 rulemaking authority beyond what is currently authorized for
16 the Department. The rules referred to in the section refer
17 to federal rules implementing the federal statute cited in
18 this section.

19 Section 10 is intended to retain existing authority to
20 set a licensing standards except that these standards may be
21 set for the new types of health care facilities added by
22 this bill.

23 Section 13 is intended to authorize the Department to
24 prescribe by rule the form of letters of intent and
25 applications for certificate of need and to specify what

1 information should be provided in each. This is further
2 specific authority for rules governing a portion of the
3 review process. The procedure for the entire review process
4 is intended to be detailed under the authority delegated by
5 Section 2.

6 Section 14 is explicit as to what review criteria,
7 required findings, and standards must be included in
8 Department rules adopted to implement the act; however, the
9 Department may, within the scope of this section, adopt
10 rules to more clearly define the criteria enumerated in this
11 section.

12 Section 15 allows the Department to establish by rule
13 what will constitute "good cause" to extend the period for
14 which a certificate of need is valid.

15 Section 16 is intended to permit the Department to
16 define what will constitute "good cause" to grant a
17 reconsideration hearing, in order to prevent hearings based
18 on frivolous grounds and to contain administrative costs.
19 This section is also intended to authorize additional
20 specific procedures for administrative hearings, at both the
21 Department and Board levels, than are provided in the
22 Montana Administrative Procedure Act but which are
23 consistent with the provisions of MAPA.

24 Section 20 is intended to apply specifically to Title
25 50, chapter 5, part 4, and does not broaden existing

1 rulemaking authority except where it applies to the new
2 types of health care facilities added by this bill.

3 First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH,
4 WELFARE, AND SAFETY on February 14, 1979.

Approved by Committee
on Public Health, Welfare
& Safety

1 SENATE BILL NO. 100

2 INTRODUCED BY NORMAN, MENAHAN

3 BY REQUEST OF

4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
7 RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE
8 FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH
9 AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING
10 LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A
11 CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR
12 CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING
13 GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH
14 CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES;
15 AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106,
16 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301,
17 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404,
18 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING
19 SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303,
20 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 50-5-101, MCA, is amended to read:

24 "50-5-101. Definitions. As used in parts 1 through 3 of
25 of this chapter, unless the context clearly indicates

1 otherwise, the following definitions apply:

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

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

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

19 ~~(4)~~ (4) "Board" means the board of health and
20 environmental sciences, provided for in 2-15-2104.

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

24 ~~(2) "Construction" means the erection, expansion,~~
25 ~~remodeling, or alteration of a new or existing facility; the~~

1 capital expenditure for which amounts to \$50,000 or more in
 2 any 12-month period or any substantial change in services
 3 any increase or decrease in the number of beds in excess of
 4 10% of the licensed capacity of the facility or in excess of
 5 10 beds, whichever is the lesser, or any purchase of
 6 therapeutic or diagnostic equipment (excluding replacement
 7 of existing equipment) in any 12-month period at a cost
 8 exceeding 2% of the facility's total operating costs for the
 9 most recently completed fiscal year up to a maximum of
 10 \$100,000 or exceeding \$10,000, whichever is larger. All
 11 exemptions from this definition must nevertheless be
 12 consistent with the state medical facilities plan of the
 13 department.

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

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

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

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

25 (10) "Health care facility" means a hospital

1 hospital-related facility, or long-term care facility, any
 2 institution, building, or agency or portion thereof, private
 3 or public, excluding federal facilities, whether organized
 4 for profit or not, used, operated, or designed to provide
 5 health services, medical treatment, or nursing,
 6 rehabilitative, or preventive care to any person or persons.
 7 The term does not include offices of private physicians or
 8 dentists. The term includes but is not limited to ambulatory
 9 surgical facilities, health maintenance organizations, home
 10 health agencies, hospitals, infirmaries, kidney treatment
 11 centers, long-term care facilities, mental health centers,
 12 outpatient facilities, public health centers, rehabilitation
 13 facilities, and adult day-care centers.

14 (11) "Health maintenance organization" means a public
 15 or private organization organized as defined in 42 U.S.C.
 16 300e, as amended.

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

24 (13) "Hospital" means a health-care facility
 25 licensed by the department to provide providing, by or under

1 the supervision of licensed physicians, services for medical
 2 diagnosis, treatment, rehabilitation, and care of injured,
 3 disabled, or sick persons. Services provided may or may not
 4 include obstetrical care, emergency care, or any other
 5 service as allowed by state licensing authority. A health
 6 care--facility--in-order-to-be-licensed-as-a hospital--must
 7 have has an organized medical staff--provide which is on
 8 call and available within 20 minutes, 24 hours per day, 7
 9 days per week, and provides 24-hour nursing care by licensed
 10 professional registered nurses, and be in compliance with
 11 the rules for licensed hospitals adopted by the department.
 12 This term includes hospitals specializing in providing
 13 health services for psychiatric, mentally retarded, and
 14 tubercular patients.

15 (7)--"Hospital-related facility"--means--a--facility
 16 licensed--by-the-department-to-provide-diagnosis-treatment,
 17 medical-or-nursing-care, or-medically-related-rehabilitation
 18 services--Such-facilities-include-but-are-not-limited-to
 19 outpatient-facilities, public-health-centers, rehabilitation
 20 facilities, long-term-care-facilities, infirmaries, mental
 21 health-and-mental-retardation-institutions, alcoholism-and
 22 drug-dependency-centers, and-half-way-houses--A-health-care
 23 facility--in-order-to-be-licensed-as-a--"hospital-related
 24 facility"--shall-be-in-compliance-with-the-regulations-for
 25 the-specific-category-of-facility-adopted-by-the-department.

1 (8)(14) "Infirmery" means a facility located in a
 2 university, college, government institution, or industry for
 3 the treatment of the sick or injured, with the following
 4 subdefinitions:

5 (9)(a) an "infirmery--A" "infirmery--A" provides
 6 outpatient and inpatient care;

7 (10)(b) an "infirmery--B" "infirmery--B" provides
 8 outpatient care only.

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

12 (11)(16) (a) "Long-term care facility" means a piece
 13 facility or part thereof which provides skilled nursing care
 14 or intermediate nursing care to a total of two or more
 15 persons or personal care to more than three persons who--by
 16 reason-of-illness-or-disability-are-unable-to-properly-care
 17 for--themselves--and are not related to the owner or
 18 administrator by blood or marriage and--includes--the
 19 facilities--defined-as-follows, with these degrees of care
 20 defined as follows:

21 (i) "Skilled nursing facilities"--are--establishments
 22 furnishing--continuous--skilled--nursing--care--and--related
 23 services--24-hours-a-day care" means the provision of nursing
 24 care services, health-related services, and social services
 25 under the supervision of a licensed registered nurse on a

1 24-hour basis.

2 (ii) "Intermediate nursing care" facilities--A--are
 3 establishments--furnishing--limited-skilled-nursing-care-and
 4 personal-care means the provision of nursing care services,
 5 health-related services, and social services under the
 6 supervision of a licensed nurse to patients not requiring
 7 24-hour nursing care.

8 (iii) "Intermediate--care----facilities--B"-----are
 9 establishments-providing-only-personal-care-and-services--to
 10 residents. "Personal care" means the provision of services
 11 and care which do not require nursing skills to residents
 12 needing some assistance in performing the activities of
 13 daily living.

14 (iv) "Combination---facilities"---ere---establishments
 15 providing--two--or--more--of-the-following-services--skilled
 16 nursing-care-and-intermediate-care--A-and-B.

17 (b) Hotels, motels, boardinghouses, boarding homes,
 18 roominghouses, or similar accommodations providing for
 19 transients, students, or persons not requiring institutional
 20 health care are not considered--to--be long-term care
 21 facilities.

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

1 services.

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

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

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

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

22 (d) health services which are offered in or through a
 23 health care facility and which were not offered on a regular
 24 basis in or through such health care facility within the
 25 12-month period prior to the time such services would be

1 offered or the deletion by a health care facility of a
 2 service previously offered;

3 (e) the expansion of a geographic service area of a
 4 home health agency;

5 (19) "Nonprofit health care facility" means a health
 6 care facility owned or operated by one or more nonprofit
 7 corporations or associations;

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

11 (21) "Offer" means the holding out by a health care
 12 facility that it can provide specific health services;

13 (22) "Outpatient facility--A" means a physically
 14 separate component of a licensed hospital or a medical
 15 clinic or other establishment owned or operated by a
 16 licensed physician which has an observation bed or beds and
 17 provides to patients not requiring hospitalization the
 18 services of persons licensed to practice medicine or
 19 dentistry in the state of Montana. No patient may be allowed
 20 to remain in an outpatient facility for more than 6 hours a
 21 facility, located in or apart from a hospital, providing,
 22 under the direction of a licensed physician, either
 23 diagnosis or treatment, or both, to ambulatory patients in
 24 need of medical, surgical, or mental care. An out-patient
 25 QUIPATIENI facility may have observation beds;

1 (23) "Outpatient facility--B" means a facility operated
 2 physically apart from a hospital other than a medical
 3 clinic or other establishment owned or operated by a
 4 licensed physician which provides to ambulatory patients
 5 not requiring hospitalization the services of persons
 6 licensed to practice medicine or dentistry in Montana but
 7 which does not have an observation bed or beds as defined in
 8 subsection (22);

9 (24) "Patient" means an individual obtaining services,
 10 including skilled nursing care, from a health care facility;

11 (25) "Person" means an individual, firm,
 12 partnership, association, organization, agency, institution,
 13 corporation, trust, estate, or governmental unit, whether
 14 organized for profit or not.

15 (26) "Public health center" means a publicly owned
 16 facility utilized by a local health unit for the provision
 17 providing of public health services, including related
 18 public facilities such as laboratories, clinics, and
 19 administrative offices operated in connection with a public
 20 health center.

21 (27) "Rehabilitation facility" means a facility
 22 providing community service which is operated for the
 23 primary purpose of assisting in the rehabilitation of
 24 disabled persons through an integrated program under
 25 competent professional supervision including medical

1 ~~services--and--evaluation--and--psychological--social--and~~
 2 ~~vocational--services--and--evaluation~~ by providing
 3 comprehensive medical evaluations and services,
 4 psychological and social services, or vocational evaluation
 5 and training or any combination of these services and in
 6 which the major portion of the services is furnished within
 7 the facility.

8 ~~(18)(27)~~ "Resident" means a person who is in a
 9 long-term care facility ~~as a patient or for intermediate or~~
 10 personal care.

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

13 Section 2. Section 50-5-103, MCA, is amended to read:

14 "50-5-103. Rules and standards. (1) The department
 15 shall promulgate ~~and adopt and publish~~ rules and minimum
 16 standards for ~~the licensure of all hospitals and~~
 17 hospital-related facilities for implementation of parts 1
 18 through 4.

19 (2) ~~Rules relating to building equipment and fire~~
 20 ~~and life safety shall be covered by the state building code.~~
 21 Any facility covered by this chapter shall comply with the
 22 state and federal requirements relating to construction,
 23 equipment, and fire and life safety.

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

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

12 Section 4. Section 50-5-105, MCA, is amended to read:

13 "50-5-105. Discrimination among patients of physicians
 14 prohibited. (1) All phases of the operation of a health care
 15 facility shall be without discrimination against anyone on
 16 the basis of race, creed, religion, color, national origin,
 17 sex, age, marital status, physical or mental handicap, or
 18 political ideas.

19 (2) No person who operates a facility may discriminate
 20 among the patients of licensed physicians. The free and
 21 confidential professional relationship between a licensed
 22 physician and patient shall continue and remain unaffected.
 23 ~~Physicians shall continue to have direction over their~~
 24 ~~patients."~~

25 Section 5. Section 50-5-106, MCA, is amended to read:

1 ~~"50-5-106. Information received confidentially~~ Records
 2 ~~and reports required of health care facilities --~~
 3 ~~confidentiality. Health care facilities shall keep records~~
 4 ~~and make reports as required by the department. Before~~
 5 ~~February 1 of each year, every licensed health care facility~~
 6 ~~shall submit an annual report for the preceding calendar~~
 7 ~~year to the department. The report shall be on forms and~~
 8 ~~contain information specified by the department. Information~~
 9 ~~received by the department or board through reports,~~
 10 ~~inspection inspections, or provisions of parts 1 through--3~~
 11 ~~and 2 may not be disclosed in a way which would identify~~
 12 ~~individuals or facilities, except in a proceeding involving~~
 13 ~~the question of licensure or as required by the federal~~
 14 ~~government for certification or preparation of a state plan~~
 15 ~~patients. A DEPARTMENT EMPLOYEE WHO DISCLOSES INFORMATION~~
 16 ~~WHICH WOULD IDENTIFY A PATIENT SHALL BE DISMISSED FROM~~
 17 ~~EMPLOYMENT AND SUBJECT TO THE PROVISION OF 45-7-901, UNLESS~~
 18 ~~THE DISCLOSURE WAS AUTHORIZED IN WRITING BY THE PATIENT, HIS~~
 19 ~~GUARDIAN, OR HIS AGENT. Information and statistical reports~~
 20 ~~from health care facilities which are considered necessary~~
 21 ~~by the department for health planning and resource~~
 22 ~~development activities will be made available to the public~~
 23 ~~and the health planning agencies within the state.~~
 24 ~~Applications by health care facilities for certificates of~~
 25 ~~need and any information relevant to review of these~~

1 ~~applications, pursuant to part 3, shall be accessible to the~~
 2 ~~public."~~

3 Section 6. Section 50-5-108, MCA, is amended to read:
 4 "50-5-108. Injunction. The department, on advice of
 5 the attorney general, may maintain bring an action for
 6 injunction or other process against any person to restrain
 7 or prevent the establishment, conduct, management, or
 8 operation of a facility which is endangering health and
 9 welfare in violation of any provision of parts 1 or 4 of
 10 this chapter."

11 Section 7. Section 50-5-109, MCA, is amended to read:
 12 "50-5-109. Penalty. A person who violates provisions
 13 of parts 1 through--3 or 4 is guilty of a misdemeanor. On
 14 conviction he shall be fined not more than \$100 for the
 15 first offense and not more than \$300 for each subsequent
 16 offense. Each day of a continuing violation after conviction
 17 is a separate offense."

18 Section 8. Section 50-5-201, MCA, is amended to read:
 19 "50-5-201. License requirements. (1) A licensee who
 20 contemplates construction of or alteration or addition to a
 21 health care facility shall submit plans and specifications
 22 to the department for preliminary inspection and approval
 23 prior to commencing construction.

24 ††(2) No person may operate a health care facility
 25 unless the facility is licensed by the department. Licenses

1 shall be for 1 year unless issued for a shorter period. A
 2 license is valid only for the person and premises for which
 3 it was issued. A license may not be sold, assigned, or
 4 transferred.

5 ~~(2)(1)~~ Upon discontinuance of the operation or of
 6 transfer of ownership of a facility, the license must be
 7 returned to the department.

8 ~~(3)(4)~~ Licenses shall be displayed in a conspicuous
 9 place near ~~where patients--or--residents--are--admitted the~~
 10 admitting office of the facility."

11 Section 9. Section 50-5-204, MCA, is amended to read:

12 "50-5-204. Issuance and renewal of licenses. (1) On
 13 receipt of a new or renewal application, the department or
 14 its authorized agent shall inspect the facility. If minimum
 15 standards are met and the proposed staff is qualified, the
 16 department shall issue a license for 1 year. If minimum
 17 standards are not met, the department may issue a
 18 provisional license for less than 1 year if operation will
 19 not result in undue hazard to patients or residents or if
 20 the demand for accommodations offered is not met in the
 21 community. The minimum standards which home health agencies
 22 must meet in order to be licensed shall be as outlined in 42
 23 U.S.C. 1395 x(o), as amended, and in rules implementing it
 24 which add minimum standards.

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

1 access to all records shall be granted at all reasonable
 2 times."

3 Section 10. Section 50-5-207, MCA, is amended to read:

4 "50-5-207. Denial, suspension, or revocation of
 5 ~~hospital--or--hospital--related health care~~ facility license ==
 6 provisional license. (1) The department may deny, suspend,
 7 or revoke a ~~hospital--or--hospital--related health care~~
 8 facility license if it ~~finds there has been substantiated~~
 9 ~~failure to comply with the provisions of parts 1 through 3,~~
 10 any of the following circumstances exist:

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

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

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

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

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

25 (f) There is misappropriation of the property or funds

1 of a patient or resident.

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

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

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

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

11 NEW SECTION. Section 11. Civil penalty -- injunction.

12 (1) A person who violates the terms of [Title 50, chapter 5,
13 part 2,] is subject to a civil penalty not to exceed \$1,000.
14 Each day of violation constitutes a separate violation. The
15 department or, upon request of the department, the county
16 attorney of the county where the health care facility in
17 question is located may petition the district court to
18 impose, assess, and recover the civil penalty. Money
19 collected as a civil penalty shall be deposited in the state
20 general fund.

21 (2) The department or, upon request of the department,
22 the county attorney of the county where the health care
23 facility in question is located may bring an action to
24 enjoin a violation of any provision of [Title 50, chapter 5,
25 part 2], in addition to or exclusive of the remedy in

1 subsection (1).

2 Section 12. Section 50-5-301, MCA, is amended to read:

3 "50-5-301. Preliminary submission of plans for
4 approval. When application is required, the department
5 may adopt rules to require an applicant or licensee who
6 contemplates construction of, alteration or addition to a
7 health care facility to submit plans and specifications to
8 the department for preliminary inspection and approval prior
9 to commencing construction.

10 (2) Approval may be given only if the plans and
11 specifications conform to the state or the municipal
12 building code which applies to the facility. Unless an
13 application has been submitted to and a certificate of need
14 granted by the department, no person may initiate any of the
15 following:

16 (1) a new institutional health service as defined in
17 50-5-101;

18 (2) any expenditure by or on behalf of a health care
19 facility in excess of \$150,000 made in preparation for the
20 offering or development of a new institutional health
21 service and any arrangement or commitment made for financing
22 the offering or development of the new institutional health
23 service. Expenditures made in the preparation for the
24 offering of a new institutional health service shall include
25 expenditures for architectural designs, preliminary plans,

1 working drawings, specifications, studies, and surveys."

2 Section 13. Section 50-5-302, MCA, is amended to read:

3 "50-5-302. Form ~~and content of application for~~

4 approval Application and review process. ~~(1) An application~~

5 for approval must be submitted to the department in a form

6 together with information as the department may prescribe

7 ~~(2) The application shall include:~~

8 ~~(a) a narrative description of the proposed project;~~

9 ~~(b) the number and type of beds and/or services to be~~

10 provided;

11 ~~(c) the estimated cost;~~

12 ~~(d) the source of financing;~~

13 ~~(e) the expected time for completion of the proposed~~

14 project; and

15 ~~(f) a simple line drawing showing major dimensions of~~

16 the proposed project. (1) Any person intending to initiate

17 an activity for which a certificate of need is required

18 shall submit a letter of intent to the department. After

19 receipt, the department shall send the applicant a form

20 requiring the submission of information considered necessary

21 by the department to determine if the proposed activity

22 meets the standards in 50-5-304. The form and content of the

23 notification of intent and applications for certificates of

24 need shall be prescribed by rule by the department.

25 (2) Within 15 calendar days after receipt of the

1 application, the department shall determine whether it

2 contains sufficient information to determine if the proposed

3 activity meets the standards in 50-5-304. If the application

4 is found incomplete, the department shall request additional

5 information.

6 (3) After the application has been designated

7 complete, notification must be sent to the applicant and all

8 other affected persons regarding the department's projected

9 review of the application and the review period time

10 schedule. The review period for the application may be no

11 longer than 90 calendar days after the notice is sent unless

12 a longer period is agreed to by the applicant. During the

13 review period a public hearing may be held if requested by

14 one or more affected persons.

15 (4) The department shall, after considering all

16 comments received during the review period, issue a

17 certificate of need, with or without conditions, or reject

18 the application. If the department fails to act within the

19 designated period and an extension has not been granted, the

20 failure to act constitutes disapproval of the application.

21 The department shall notify the applicant and affected

22 persons of its decision."

23 Section 14. Section 50-5-304, MCA, is amended to read:

24 "50-5-304. Requirements for approval Review criteria,

25 required findings, and standards. ~~(1) No application may be~~

1 approved unless the action proposed:

2 (a) is necessary to provide required health care in

3 the area to be served;

4 (b) can be economically accomplished and maintained;

5 and

6 (c) will contribute to the orderly development of

7 adequate and effective health services.

8 (2) In making the determinations enumerated in

9 subsection (1), the following shall be considered:

10 (a) the compatibility with needs shown in the

11 appropriate state plan provided by those statutes relating

12 to facilities contained in part 4 of this chapter;

13 (b) the availability of facilities or services which

14 may serve as alternates or substitutes;

15 (c) the need for special equipment and services in the

16 area;

17 (d) the possible economies and improvement in services

18 to be anticipated from the operation of combined central

19 services including but not limited to laboratory, research,

20 radiology, pharmacy, laundry, and purchasing;

21 (e) the adequacy of financial resources and sources of

22 future revenues; and

23 (f) the availability of sufficient manpower in the

24 several professional disciplines. The department shall by

25 rule promulgate and utilize, as appropriate, specific

1 criteria for reviewing certificate of need applications

2 under this chapter, including but not limited to the

3 following considerations and required findings:

4 (1) the relationship of the health services being

5 reviewed to the applicable health systems plan and annual

6 implementation plan developed pursuant to Title XV of the

7 Public Health Service Act, as amended;

8 (2) the relationship of services reviewed to the

9 long-range development plan, if any, of the person providing

10 or proposing the services;

11 (3) the need that the population served or to be

12 served by the services has for the services;

13 (4) the availability of less costly QUALITY EQUIVALENT

14 or more effective alternative methods of providing such

15 services;

16 (5) the immediate and long-term financial feasibility

17 of the proposal as well as the probable impact of the

18 proposal on the costs of and charges for providing health

19 services by the person proposing the health service;

20 (6) the relationship and financial impact of the

21 services proposed to be provided to the existing health care

22 system of the area in which such services are proposed to be

23 provided;

24 (7) the availability of resources, including health

25 manpower, management personnel, and funds for capital and

1 operating needs for the provision of services proposed to be
2 provided and the availability of alternative uses of such
3 resources for the provision of other health services;

4 (8) the relationships, including the organizational
5 relationship, of the health services proposed to be provided
6 to ancillary or support services;

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

14 (10) the special needs and circumstances of health
15 maintenance organizations for which assistance may be
16 provided under Title XIII of the Public Health Service Act.
17 Such needs and circumstances include the needs of and costs
18 to members and projected members of the health maintenance
19 organization in obtaining health services and the potential
20 for a reduction in the use of inpatient care in the
21 community through an extension of preventive health services
22 and the provision of more systematic and comprehensive
23 health services.

24 (11) the special needs and circumstances of biomedical
25 and behavioral research projects which are designed to meet

1 a national need and for which local conditions offer special
2 advantages;

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

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

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

16 Section 15. Section 50-5-305, MCA, is amended to read:
17 "50-5-305. Period of validity of approved application.
18 An approved application for construction is valid for it, or
19 from the date of issue but may be extended by the department
20 for a period of 6 months. A certificate of need shall
21 terminate 1 year after the date of issuance unless:

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

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

5 Section 16. Section 50-5-306, MCA, is amended to read:

6 "50-5-306. Right to hearing and appeal. ~~{1}--If--the~~
 7 ~~department--disapproves-an-application-for-construction-of-a~~
 8 ~~facility--it--shall--notify--the--applicant--of--its--actions--and~~
 9 ~~afford--the--applicant--an--opportunity--to--request--a--hearing~~
 10 ~~before--the--board.~~

11 ~~{2}--When--this--hearing--is--desired--the--applicant--shall~~
 12 ~~notify--the--department--in--writing--within--15--days--after--the~~
 13 ~~notice--of--disapproval--is--received.~~

14 ~~{3}--If--the--decision--after--hearing--is--adverse--the~~
 15 ~~applicant--may--appeal--to--the--district--court--as--provided--in~~
 16 ~~Title--2v--chapter--4v--part--7. (1) THE APPLICANT OR A HEALTH~~
 17 ~~SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC~~
 18 ~~HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC~~
 19 ~~HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION. IF~~
 20 ~~THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR~~
 21 ~~DAYS AFTER THE DECISION IS ANNOUNCED, ANY OTHER affected~~
 22 ~~person may, for good cause, request the department to~~
 23 ~~reconsider its decision at a public SUCH A hearing. The~~
 24 ~~department shall grant the request if the affected person~~
 25 ~~submits the request in writing showing good cause as defined~~

1 in rules adopted by the department and if the request is
 2 received by the department within 30 calendar days after the
 3 decision is announced. The public hearing to reconsider
 4 shall be held, if warranted OR REQUIRED, within 30 calendar
 5 days after its request. The department shall make its final
 6 decision and written findings of fact and conclusions of law
 7 in support thereof within 45 days after the conclusion of
 8 the reconsideration hearing. THE HEARING SHALL BE CONDUCTED
 9 IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

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

21 (3) The scope of the hearing before the board is
 22 limited to a review of the record upon which the department
 23 made its decision. THE BOARD, UPON REQUEST OF ANY PARTY TO
 24 AN APPEAL BEFORE THE BOARD, SHALL HEAR ORAL ARGUMENTS AND
 25 RECEIVE WRITTEN BRIEFS. Within 45 calendar days after the

1 ~~conclusion of the public hearing, the board shall make and~~
 2 ~~issue its decision, supported by written findings of fact~~
 3 ~~and conclusions of law. The board may affirm the~~
 4 ~~department's decision or remand it for further proceedings.~~
 5 ~~The board may reverse or modify the department's decision if~~
 6 ~~the appellant's rights have been prejudiced for any of the~~
 7 ~~reasons found in 2-4-704.~~

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

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

15 Section 17. Section 50-5-307, MCA, is amended to read:
 16 "50-5-307. Penalties---for---failure---to---obtain---prior
 17 approval ~~civil penalty -- injunction.~~ Penalties-for---failure
 18 to---obtain---prior---approval---of---the---departaent---are---as---follows:

19 (1) ~~Any person who constructs any new health care~~
 20 ~~facility as defined in 50-5-101 without prior approval by~~
 21 ~~the department is guilty of a misdemeanor and shall be~~
 22 ~~punished by a fine of not less than \$1,000 or more than~~
 23 ~~\$10,000; the fine to be deposited in the state general fund~~
 24 ~~and this new facility is not eligible for licensure as a~~
 25 ~~health care facility as defined in 50-5-101;~~

1 (2) ~~Any person who expends, remodels or alters an~~
 2 ~~existing health care facility as defined in 50-5-101 without~~
 3 ~~prior written approval by the department is guilty of a~~
 4 ~~misdemeanor and shall be punished by a fine of not less than~~
 5 ~~\$1,000 or more than \$10,000; the fine to be deposited in the~~
 6 ~~state general fund. (1) A person who violates the terms of~~
 7 ~~59-5-101 50-5-301 is subject to a civil penalty of not less~~
 8 ~~than \$1,000 or more than \$10,000. Each day of violation~~
 9 ~~constitutes a separate offense. The department or, upon~~
 10 ~~request of the department, the county attorney of the county~~
 11 ~~where the health care facility in question is located may~~
 12 ~~petition the district court to impose, assess, and recover~~
 13 ~~the civil penalty. Money collected as a civil penalty shall~~
 14 ~~be deposited in the state general fund.~~

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

20 **NEW SECTION.** Section 18. Special circumstances. In
 21 the event of destruction of any part of a health care
 22 facility as a result of fire, storm, civil disturbance, or
 23 any act of God, the department may issue a certificate of
 24 need for only the replacement of the previously existing
 25 facility or portion thereof.

1 Section 19. Section 50-5-402, MCA, is amended to read:

2 "50-5-402. Administration of state medical facility
3 plan. The department is the principal state agency for
4 establishing and administering a statewide plan for
5 construction, modernization, alteration, equipment,
6 maintenance, or operation of a ~~hospital, medical, or related~~
7 health care facility for provision of care, treatment,
8 diagnosis, rehabilitation, training, or related service.
9 ~~This plan is to be known as the state medical facility~~
10 plan."

11 Section 20. Section 50-5-404, MCA, is amended to read:

12 "50-5-404. Duties of department. The department shall:
13 ~~(1) adopt necessary rules for the administration of~~
14 ~~this part~~

15 ~~(2) prescribe minimum standards for the maintenance~~
16 ~~and operation of hospital, medical, and related health care~~
17 ~~facilities receiving federal aid for construction under the~~
18 ~~state plan;~~

19 ~~(3) inventory existing hospital, medical, and~~
20 ~~related health care facilities;~~

21 ~~(4) survey the need for construction or alteration~~
22 ~~of hospital health care facilities;~~

23 ~~(5) develop and administer a state plan for the~~
24 ~~construction and alteration of public and other nonprofit~~
25 ~~hospital, medical, and related health care facilities;~~

1 ~~(6) if desirable, enter into agreements for the~~
2 ~~utilization of facilities and services of other departments,~~
3 ~~agencies, and institutions, public or private;~~

4 ~~(7) accept and deposit with the state treasurer and~~
5 ~~spend any grant, gift, or contribution made to meet costs of~~
6 ~~carrying out this part;~~

7 ~~(8) prepare and review a construction program in~~
8 ~~accordance with federal requirements that will provide~~
9 ~~adequate hospital, medical, and related health care~~
10 ~~facilities to people in the state providing, as far as~~
11 ~~possible, for distribution throughout the state to make all~~
12 ~~types of services reasonably acceptable available to all~~
13 ~~persons;~~

14 ~~(9) submit to federal agencies state plans~~
15 ~~including those for the hospital, medical, and related~~
16 ~~health care facilities construction program and~~
17 ~~modifications of it providing for the establishment and~~
18 ~~operation of hospital, medical, and related health care~~
19 ~~facilities construction activities in accordance with~~
20 ~~federal requirements;~~

21 ~~(10) make application to the appropriate federal~~
22 ~~agency for funds to assist in carrying out the survey and~~
23 ~~planning activities;~~

24 ~~(11) after approval of a plan by the appropriate~~
25 ~~federal agency, publish a description in newspapers having~~

1 general circulation throughout the state and make the plan
2 available upon request to all persons or organizations;

3 ~~††2†~~111 inspect construction or alteration projects
4 approved by the appropriate federal agency and, if
5 satisfactory, certify that work has been performed on the
6 project or purchases made in accordance with approved plans
7 and specifications and that payment of federal funds is due
8 to the applicant;

9 ~~††3†~~112 require reports and make inspections and
10 investigations as necessary or required by the federal
11 agency;

12 ~~††4†~~113 contract with consultants for services which
13 are performed on a part-time or fee-for-service basis not
14 involving administrative duties."

15 Section 21. Section 50-5-405, MCA, is amended to read:

16 "50-5-405. Contracts with federal agencies. The
17 department may enter into contracts and agreements with
18 agencies of the federal government to secure the benefit of
19 federal programs to provide adequate ~~medical--and--related~~
20 health_care facilities and services."

21 Section 22. Section 50-5-408, MCA, is amended to read:

22 "50-5-408. Applications for construction projects.
23 Applications for ~~hospitality-medical--and--related~~ health_care
24 facilities construction projects may be submitted by a state
25 agency, a political subdivision, or by any public or

1 nonprofit agency authorized to construct and operate a
2 ~~hospitality-medical--or--related~~ health_care facility."

3 Section 23. Section 50-5-411, MCA, is amended to read:

4 "50-5-411. Consolidated applications. (1) Boards of
5 county commissioners of two or more counties may submit a
6 consolidated application for a single ~~hospitality-medical~~
7 health_care facility, or health center serving each of the
8 counties included in the application.

9 (2) Any statutes investing counties with powers to
10 construct, maintain, and operate ~~hospitals--or--medical~~ health
11 care facilities directly or by lease or contract may be
12 utilized for this joint action.

13 (3) All statutes governing submission of questions of
14 establishing a ~~hospital--or--medical~~ health_care facility,
15 ~~hospital--or--medical~~ health_care facility construction,
16 issuance of bonds, ~~or~~ method of operation, and requiring a
17 majority vote of taxpayers on the questions shall apply.

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

22 Section 24. Saving clause. This act does not affect
23 certificate of need applications received and declared
24 complete or granted by the department before the effective
25 date of this act.

1 Section 25. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 26. Codification. (1) It is intended that
8 section 11 of this act be codified as an integral part of
9 Title 50, chapter 5, part 2; and the provisions contained in
10 Title 50, chapter 5, parts 1 through 4, apply to section 11
11 of this act.

12 (2) It is intended that section 18 of this act be
13 codified as an integral part of Title 50, chapter 5, part 3;
14 and the provisions contained in Title 50, chapter 5, parts 1
15 through 4, apply to section 18 of this act.

16 Section 27. Repealer. Sections 50-5-102, 50-5-205,
17 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and
18 50-7-101 through 50-7-309, MCA, are repealed.

-End-

SB 100

1 STATEMENT OF INTENT RE: SB 100

2
3
4 A statement of intent is required for this bill because
5 it delegates rulemaking authority to the Department of
6 Health and Environmental Sciences. This bill is intended to
7 expand the authority of the Department of Health and
8 Environmental Sciences to license health care facilities in
9 order to cover additional health care facilities, and to
10 revise the requirements of specific health care facilities
11 to obtain a certificate of need. Generally the Department of
12 Health and Environmental Sciences is intended to have the
13 authority to amend and update existing licensure rules and
14 to adopt new rules for licensure to conform with the
15 mandates of P.L. 92-603 and the Social Security Act, titles
16 V, XVIII, and XIX.

17 In the same spirit, the Department may write and adopt
18 rules, in accordance with the Montana Administrative
19 Procedure Act, to insure the implementation of a state
20 certificate of need program which meets the minimum
21 standards of P.L. 93-641, the National Health Planning and
22 Resources Development Act, and which is acceptable to the
23 Secretary of the Department of Health, Education and
24 Welfare. This program is aimed at insuring that only new
25 institutional health services, expenditures in excess of

1 \$150,000 made to prepare for a new institutional health
2 service, or arrangements and commitments made to finance a
3 new institutional health service which are found by the
4 Department of Health and Environmental Sciences to be needed
5 may be granted a certificate of need and that only those
6 services which are granted a certificate of need may be
7 offered to the public.

8 Section 2 is the primary, broad-based source of
9 rulemaking authority for the entire chapter. Insofar as
10 licensing and certification of health care facilities are
11 concerned, Title 50, chapter 5, part 2, this section does
12 not add any new discretionary authority beyond that already
13 authorized for the Department, with the exception that this
14 section is intended to allow the setting of certification
15 standards for additional types of health care facilities,
16 such as health maintenance organizations and adult day care
17 centers not currently covered by law. This section is not
18 intended to expand the existing rulemaking authority under
19 part 4 except for rules specific to the additional health
20 care facilities that will be covered.

21 Section 2 is intended to clearly authorize rulemaking
22 authority to implement part 3. As a minimum, it is intended
23 that the Department may adopt rules covering the following:

24 1. procedures and assurances required by 42 CFR
25 123.401 through 42 CFR 123.411 and any subsequent rules

1 replacing or augmenting them;

2 2. procedures to be followed during the review
3 process, including any interrelationships with review being
4 conducted by a health systems agency; and

5 3. the effect on an application for certificate of
6 need if the Department fails to decide whether to approve or
7 disapprove the application within the time period set for
8 review.

9 Section 5 is intended to allow the Department to
10 require health care facilities to keep records and file
11 reports with the Department containing information relevant
12 to licensing, certification, statewide health planning, and
13 resources development.

14 Section 9 is not intended to be construed to add new
15 rulemaking authority beyond what is currently authorized for
16 the Department. The rules referred to in the section refer
17 to federal rules implementing the federal statute cited in
18 this section.

19 Section 10 is intended to retain existing authority to
20 set a licensing standards except that these standards may be
21 set for the new types of health care facilities added by
22 this bill.

23 Section 13 is intended to authorize the Department to
24 prescribe by rule the form of letters of intent and
25 applications for certificate of need and to specify what

1 information should be provided in each. This is further
2 specific authority for rules governing a portion of the
3 review process. The procedure for the entire review process
4 is intended to be detailed under the authority delegated by
5 Section 2.

6 Section 14 is explicit as to what review criteria,
7 required findings, and standards must be included in
8 Department rules adopted to implement the act; however, the
9 Department may, within the scope of this section, adopt
10 rules to more clearly define the criteria enumerated in this
11 section.

12 Section 15 allows the Department to establish by rule
13 what will constitute "good cause" to extend the period for
14 which a certificate of need is valid.

15 Section 16 is intended to permit the Department to
16 define what will constitute "good cause" to grant a
17 reconsideration hearing, in order to prevent hearings based
18 on frivolous grounds and to contain administrative costs.
19 This section is also intended to authorize additional
20 specific procedures for administrative hearings, at both the
21 Department and Board levels, than are provided in the
22 Montana Administrative Procedure Act but which are
23 consistent with the provisions of MAPA.

24 Section 20 is intended to apply specifically to Title
25 50, chapter 5, part 4, and does not broaden existing

1 rulemaking authority except where it applies to the new
2 types of health care facilities added by this bill.

3 First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH,
4 WELFARE, AND SAFETY on February 14, 1979.

SENATE BILL NO. 100

INTRODUCED BY NORMAN, MENAHAN

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES; AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106, 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404, 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 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 facilities located in the geographic area affected by the application, agencies which establish rates for health 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 IV 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 erection, expansion, remodeling, or alteration of a new or existing facility; the

1 ~~capital expenditure for which amounts to \$50,000 or more in~~
 2 ~~any 12-month period or any substantial change in services~~
 3 ~~any increase or decrease in the number of beds in excess of~~
 4 ~~10% of the licensed capacity of the facility or in excess of~~
 5 ~~10 beds, whichever is the lesser, or any purchase of~~
 6 ~~therapeutic or diagnostic equipment (excluding replacement~~
 7 ~~of existing equipment) in any 12-month period at a cost~~
 8 ~~exceeding 2% of the facility's total operating costs for the~~
 9 ~~most recently completed fiscal year up to a maximum of~~
 10 ~~\$100,000 or exceeding \$10,000, whichever is larger. All~~
 11 ~~exceptions from this definition must nevertheless be~~
 12 ~~consistent with the state medical facilities plan of the~~
 13 ~~department.~~

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

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

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

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

25 (10) "Health care facility" means a hospital,

1 ~~hospital-related facility, or long-term care facility, any~~
 2 ~~institution, building, or agency or portion thereof, private~~
 3 ~~or public, including federal facilities, whether organized~~
 4 ~~for profit or not, used, operated, or designed to provide~~
 5 ~~health services, medical treatment, or nursing,~~
 6 ~~rehabilitative, or preventive care to any person or persons.~~
 7 ~~The term does not include offices of private physicians or~~
 8 ~~dentists. The term includes but is not limited to ambulatory~~
 9 ~~surgical facilities, health maintenance organizations, home~~
 10 ~~health agencies, hospitals, infirmaries, kidney treatment~~
 11 ~~centers, long-term care facilities, mental health centers,~~
 12 ~~outpatient facilities, public health centers, rehabilitation~~
 13 ~~facilities, and adult day-care centers.~~

14 (11) "Health maintenance organization" means a public
 15 or private organization organized as defined in 42 U.S.C.
 16 100a, as amended.

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

24 (13) "Hospital" means a health-care facility
 25 licensed by the department to provide providing, by or under

1 the supervision of licensed physicians, services for medical
 2 diagnosis, treatment, rehabilitation, and care of injured,
 3 disabled, or sick persons. Services provided may or may not
 4 include obstetrical care, emergency care, or any other
 5 service as allowed by state licensing authority. A health
 6 ~~care facility in order to be licensed as a hospital must~~
 7 ~~have has an organized medical staff provide which is on~~
 8 ~~call and available within 20 minutes, 24 hours per day, 7~~
 9 ~~days per week, and provides 24-hour nursing care by licensed~~
 10 ~~professional registered nurses, and be in compliance with~~
 11 ~~the rules for licensed hospitals adopted by the department.~~
 12 This term includes hospitals specializing in providing
 13 health services for psychiatric, mentally retarded, and
 14 tubercular patients.

15 ~~(7) "Hospital-related facility" means a facility~~
 16 ~~licensed by the department to provide diagnosis, treatment,~~
 17 ~~medical or nursing care, or medically related rehabilitation~~
 18 ~~services. Such facilities include but are not limited to~~
 19 ~~outpatient facilities, public health centers, rehabilitation~~
 20 ~~facilities, long-term care facilities, infirmaries, mental~~
 21 ~~health and mental retardation institutions, alcoholism, and~~
 22 ~~drug dependency centers, and half-way houses. A health care~~
 23 ~~facility in order to be licensed as a "hospital-related~~
 24 ~~facility" shall be in compliance with the regulations for~~
 25 ~~the specific category of facility adopted by the department.~~

1 ~~(8)(14)~~ "Infirmery" means a facility located in a
 2 university, college, government institution, or industry for
 3 the treatment of the sick or injured, with the following
 4 subdefinitions:

5 ~~(9)(a)~~ an "infirmery-A" "infirmery-A" provides
 6 outpatient and inpatient care;

7 ~~(10)(b)~~ an "infirmery-B" "infirmery-B" provides
 8 outpatient care only.

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

12 ~~(11)(16)~~ (a) "Long-term care facility" means a place
 13 facility or part thereof which provides skilled nursing care
 14 or intermediate nursing care to a total of two or more
 15 persons or personal care to more than three persons who--by
 16 reason of illness or disability, are unable to properly care
 17 for--themselves--and are not related to the owner or
 18 administrator by blood or marriage and--includes--the
 19 facilities--defined as follows: with these degrees of care
 20 defined as follows:

21 (i) "Skilled nursing facilities"--are--establishments
 22 furnishing--continuous--skilled--nursing--care--and--related
 23 services--24-hours-a-day care" means the provision of nursing
 24 care services, health-related services, and social services
 25 under the supervision of a licensed registered nurse on a

1 24-hour basis.

2 (ii) "Intermediate nursing care" facilities are
3 establishments furnishing limited skilled nursing care and
4 personal care means the provision of nursing care services,
5 health-related services, and social services under the
6 supervision of a licensed nurse to patients not requiring
7 24-hour nursing care.

8 (iii) "Intermediate care facilities" are
9 establishments providing only personal care and services to
10 residents. "Personal care" means the provision of services
11 and care which do not require nursing skills to residents
12 needing some assistance in performing the activities of
13 daily living.

14 (iv) "Combination facilities" are establishments
15 providing two or more of the following services: skilled
16 nursing care and intermediate care and so

17 (b) Hotels, motels, boardinghouses, boarding homes,
18 roominghouses, or similar accommodations providing for
19 transients, students, or persons not requiring institutional
20 health care are not considered to be long-term care
21 facilities.

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

1 services.

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

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

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

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

22 (d) health services which are offered in or through a
23 health care facility and which were not offered on a regular
24 basis in or through such health care facility within the
25 12-month period prior to the time such services would be

1 offered or the deletion by a health care facility of a
 2 service previously offered:

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

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

8 (12)(20) "Observation bed" means a bed used occupied
 9 for not more than 6 hours by a patient recovering from
 10 surgery or other treatment.

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

13 (13)(22) "Outpatient facility--A" means a physically
 14 separate component of a licensed hospital or a medical
 15 clinic or other establishment owned or operated by a
 16 licensed physician which has an observation bed or beds and
 17 provides to patients not requiring hospitalization the
 18 services of persons licensed to practice medicine or
 19 dentistry in the state of Montana. No patient may be allowed
 20 to remain in an outpatient facility for more than 6 hours a
 21 facility, located in or apart from a hospital, providing
 22 under the direction of a licensed physician, either
 23 diagnosis or treatment, or both, to ambulatory patients in
 24 need of medical, surgical, or mental care. An out-patient
 25 OUTPATIENT facility may have observation beds.

1 (14) "Outpatient facility--B" means a facility operated
 2 physically apart from a hospital other than a medical
 3 clinic or other establishment owned or operated by a
 4 licensed physician which provides to ambulatory patients
 5 not requiring hospitalization the services of persons
 6 licensed to practice medicine or dentistry in Montana but
 7 which does not have an observation bed or beds as defined in
 8 subsection (12).

9 (23) "Patient" means an individual obtaining services
 10 including skilled nursing care from a health care facility.

11 (15)(24) "Person" means an individual, firm,
 12 partnership, association, organization, agency, institution,
 13 corporation, trusts, estates, or governmental unit, whether
 14 organized for profit or not.

15 (16)(25) "Public health center" means a publicly owned
 16 facility utilized by a local health unit for the provision
 17 providing of public health services, including related
 18 public facilities such as laboratories, clinics, and
 19 administrative offices operated in connection with a public
 20 health center.

21 (17)(26) "Rehabilitation facility" means a facility
 22 providing community service which is operated for the
 23 primary purpose of assisting in the rehabilitation of
 24 disabled persons through an integrated program under
 25 competent professional supervision including medical

1 ~~services--and--evaluation--and--psychological--social--and~~
 2 ~~vocational--services--and--evaluation~~ by providing
 3 comprehensive medical evaluations and services,
 4 psychological and social services, or vocational evaluation
 5 and training or any combination of these services and in
 6 which the major portion of the services is furnished within
 7 the facility.

8 ~~(17)(21)~~ "Resident" means a person who is in a
 9 long-term care facility ~~as a patient or for intermediate or~~
 10 personal care.

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

13 Section 2. Section 50-5-103, MCA, is amended to read:

14 "50-5-103. Rules and standards. (1) The department
 15 shall promulgate ~~and adopt~~ ~~and publish~~ rules and minimum
 16 standards ~~for~~ ~~licensure~~ ~~of~~ ~~all~~ ~~hospitals~~ ~~and~~
 17 ~~hospital-related facilities~~ for implementation of parts 1
 18 through 4.

19 (2) ~~Rules relating to building equipment and fire~~
 20 ~~and life safety shall be covered by the state building code~~
 21 Any facility covered by this chapter shall comply with the
 22 state and federal requirements relating to construction,
 23 equipment, and fire and life safety.

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

1 Section 3. Section 50-5-104, MCA, is amended to read:

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

12 Section 4. Section 50-5-105, MCA, is amended to read:

13 "50-5-105. Discrimination among patients of physicians
 14 prohibited. (1) All phases of the operation of a health care
 15 facility shall be without discrimination against anyone on
 16 the basis of race, creed, religion, color, national origin,
 17 sex, age, marital status, physical or mental handicap, or
 18 political ideas.

19 (2) No person who operates a facility may discriminate
 20 among the patients of licensed physicians. The free and
 21 confidential professional relationship between a licensed
 22 physician and patient shall continue and remain unaffected.
 23 ~~Physicians shall continue to have direction over their~~
 24 ~~patients."~~

25 Section 5. Section 50-5-106, MCA, is amended to read:

1 ~~"50-5-106. Information--received-confidential+ Records~~
 2 ~~and reports required of health care facilities --~~
 3 ~~confidentiality. Health care facilities shall keep records~~
 4 ~~and make reports as required by the department. Before~~
 5 ~~February 1 of each year, every licensed health care facility~~
 6 ~~shall submit an annual report for the preceding calendar~~
 7 ~~year to the department. The report shall be on forms and~~
 8 ~~contain information specified by the department. Information~~
 9 ~~received by the department or board through reports,~~
 10 ~~inspection inspections, or provisions of parts 1 through--3~~
 11 ~~and 2 may not be disclosed in a way which would identify~~
 12 ~~individuals or facilities, except in a proceeding--involving~~
 13 ~~the--question--of--licensure--or--as--required--by--the--federal~~
 14 ~~government--for--certification--or--preparation--of--a--state--plan~~
 15 ~~patients. A DEPARTMENT EMPLOYEE WHO DISCLOSES INFORMATION~~
 16 ~~WHICH WOULD IDENTIFY A PATIENT SHALL BE DISMISSED FROM~~
 17 ~~EMPLOYMENT AND SUBJECT TO THE PROVISION OF 45-7-401, UNLESS~~
 18 ~~THE DISCLOSURE WAS AUTHORIZED IN WRITING BY THE PATIENT, HIS~~
 19 ~~GUARDIAN, OR HIS AGENT. Information and statistical reports~~
 20 ~~from health care facilities which are considered necessary~~
 21 ~~by the department for health planning and resource~~
 22 ~~development activities will be made available to the public~~
 23 ~~and the health planning agencies within the state.~~
 24 ~~Applications by health care facilities for certificates of~~
 25 ~~need and any information relevant to review of these~~

1 ~~applications, pursuant to part 3, shall be accessible to the~~
 2 ~~public."~~

3 Section 6. Section 50-5-108, MCA, is amended to read:
 4 "50-5-108. Injunction. The department, on advice of
 5 the attorney general, may ~~maintain~~ bring an action for
 6 injunction or other process against any person to restrain
 7 or prevent the establishment, conduct, management, or
 8 operation of a facility which is endangering health and
 9 ~~welfare in violation of any provision of parts 1 or 4 of~~
 10 ~~this chapter."~~

11 Section 7. Section 50-5-109, MCA, is amended to read:
 12 "50-5-109. Penalty. A person who violates provisions
 13 of parts 1 through--3 ~~or 4~~ is guilty of a misdemeanor. On
 14 conviction he shall be fined not more than \$100 for the
 15 first offense and not more than \$300 for each subsequent
 16 offense. ~~Each day of a continuing violation after conviction~~
 17 ~~is a separate offense."~~

18 Section 8. Section 50-5-201, MCA, is amended to read:
 19 "50-5-201. License requirements. (1) ~~A licensee who~~
 20 ~~contemplates construction of or alteration or addition to a~~
 21 ~~health care facility shall submit plans and specifications~~
 22 ~~to the department for preliminary inspection and approval~~
 23 ~~prior to commencing construction.~~

24 ~~††(2) No person may operate a health care facility~~
 25 ~~unless the facility is licensed by the department. Licenses~~

1 shall be for 1 year unless issued for a shorter period. A
 2 license is valid only for the person and premises for which
 3 it was issued. A license may not be sold, assigned, or
 4 transferred.

5 ~~(2)(3)~~ Upon discontinuance of the operation or of
 6 transfer of ownership of a facility, the license must be
 7 returned to the department.

8 ~~(3)(4)~~ Licenses shall be displayed in a conspicuous
 9 place near where patients--or--residents--are--admitted ~~the~~
 10 admitting office of the facility."

11 Section 9. Section 50-5-204, MCA, is amended to read:
 12 "50-5-204. Issuance and renewal of licenses. (1) On
 13 receipt of a new or renewal application, the department or
 14 its authorized agent shall inspect the facility. If minimum
 15 standards are met and the proposed staff is qualified, the
 16 department shall issue a license for 1 year. If minimum
 17 standards are not met, the department may issue a
 18 provisional license for less than 1 year if operation will
 19 not result in undue hazard to patients or residents or if
 20 the demand for accommodations offered is not met in the
 21 community. The minimum standards which home health agencies
 22 must meet in order to be licensed shall be as outlined in 42
 23 U.S.C. 1395 x(1), as amended, and in rules implementing it
 24 which add minimum standards.

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

1 access to all records shall be granted at all reasonable
 2 times."

3 Section 10. Section 50-5-207, MCA, is amended to read:
 4 "50-5-207. Denial, suspension, or revocation of
 5 ~~hospital-or-hospital-related health care~~ facility license ==
 6 provisional license. (1) The department may deny, suspend,
 7 or revoke a ~~hospital--or--hospital-related health care~~
 8 facility license if ~~it finds there has been substantiated~~
 9 ~~failure to comply with the provisions of parts 1 through 3~~
 10 any of the following circumstances exist:

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

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

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

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

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

25 (f) There is misappropriation of the property or funds

1 of a patient or resident.

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

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

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

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

11 NEW SECTION. Section 11. Civil penalty -- injunction.

12 (1) A person who violates the terms of [Title 50, chapter 5,
13 part 2.] is subject to a civil penalty not to exceed \$1,000.
14 Each day of violation constitutes a separate violation. The
15 department or, upon request of the department, the county
16 attorney of the county where the health care facility in
17 question is located may petition the district court to
18 impose, assess, and recover the civil penalty. Money
19 collected as a civil penalty shall be deposited in the state
20 general fund.

21 (2) The department or, upon request of the department,
22 the county attorney of the county where the health care
23 facility in question is located may bring an action to
24 enjoin a violation of any provision of [Title 50, chapter 5,
25 part 2], in addition to or exclusive of the remedy in

1 subsection (1).

2 Section 12. Section 50-5-301, MCA, is amended to read:

3 "50-5-301. Preliminary---submission---of---plans---for
4 approve~~r~~ when application is required. (1)---The---department
5 may---adopt---rules---to---require---an---applicant---or---licensee---who
6 contemplates---construction---of---alteration---or---addition---to---a
7 health---care---facility---to---submit---plans---and---specifications---to
8 the---department---for---preliminary---inspection---and---approval---prior
9 to---commencing---construction.

10 (2)---Approval---may---be---given---only---if---the---plans---and
11 specifications---conform---to---the---state---or---the---municipal
12 building---code---which---applies---to---the---facility. Unless an
13 application has been submitted to and a certificate of need
14 granted by the department, no person may initiate any of the
15 following:

16 (1) a new institutional health service as defined in
17 50-5-101;

18 (2) any expenditure by or on behalf of a health care
19 facility in excess of \$150,000 made in preparation for the
20 offering or development of a new institutional health
21 service and any arrangement or commitment made for financing
22 the offering or development of the new institutional health
23 service. Expenditures made in the preparation for the
24 offering of a new institutional health service shall include
25 expenditures for architectural designs, preliminary plans,

1 ~~working drawings, specifications, studies, and surveys."~~

2 Section 13. Section 50-5-302, MCA, is amended to read:

3 "50-5-302. Form ~~and content of application for~~

4 ~~approval~~ Application and review process. ~~(1) An application~~

5 ~~for approval must be submitted to the department in a form~~

6 ~~together with information as the department may prescribe~~

7 ~~(2) The application shall include:~~

8 ~~(a) a narrative description of the proposed project;~~

9 ~~(b) the number and type of beds and/or services to be~~

10 ~~provided;~~

11 ~~(c) the estimated cost;~~

12 ~~(d) the source of financing;~~

13 ~~(e) the expected time for completion of the proposed~~

14 ~~project; and~~

15 ~~(f) a site plan drawing showing major dimensions of~~

16 ~~the proposed project.~~ (1) Any person intending to initiate

17 an activity for which a certificate of need is required

18 shall submit a letter of intent to the department. After

19 receipt, the department shall send the applicant a form

20 requiring the submission of information considered necessary

21 by the department to determine if the proposed activity

22 meets the standards in 50-5-304. The form and content of the

23 notification of intent and applications for certificates of

24 need shall be prescribed by rule by the department.

25 (2) Within 15 calendar days after receipt of the

1 ~~application, the department shall determine whether it~~

2 ~~contains sufficient information to determine if the proposed~~

3 ~~activity meets the standards in 50-5-304. If the application~~

4 ~~is found incomplete, the department shall request additional~~

5 ~~information.~~

6 (3) After the application has been designated

7 complete, notification must be sent to the applicant and all

8 other affected persons regarding the department's projected

9 review of the application and the review period time

10 schedule. The review period for the application may be no

11 longer than 90 calendar days after the notice is sent unless

12 a longer period is agreed to by the applicant. During the

13 review period a public hearing may be held if requested by

14 one or more affected persons.

15 (4) The department shall, after considering all

16 comments received during the review period, issue a

17 certificate of need, with or without conditions, or reject

18 the application. ~~If the department fails to act within the~~

19 ~~designated period and an extension has not been granted, the~~

20 ~~failure to act constitutes disapproval of the application.~~

21 The department shall notify the applicant and affected

22 persons of its decision."

23 Section 14. Section 50-5-304, MCA, is amended to read:

24 "50-5-304. Requirements for approval Review criteria:

25 required findings, and standards. ~~(1) No application may be~~

1 approved unless the action proposed*

2 (a) -- is necessary to provide required health care in

3 the area to be served†

4 (b) -- can be economically accomplished and maintained†

5 and

6 (c) -- will contribute to the orderly development of

7 adequate and effective health services‡

8 (2) -- in making the determinations enumerated in

9 subsection (1) the following shall be considered‡

10 (a) -- the compatibility with needs shown in the

11 appropriate state plan provided by those statutes relating

12 to facilities contained in part 4 of this chapter†

13 (b) -- the availability of facilities or services which

14 may serve as alternates or substitutes†

15 (c) -- the need for special equipment and services in the

16 area†

17 (d) -- the possible economies and improvement in services

18 to be anticipated from the operation of combined central

19 services including but not limited to laboratory, research,

20 radiology, pharmacy, laundry, and purchasing†

21 (e) -- the adequacy of financial resources and sources of

22 future revenues† and

23 (f) -- the availability of sufficient manpower in the

24 several professional disciplines. The department shall by

25 rule promulgate and utilize, as appropriate, specific

1 criteria for reviewing certificate of need applications

2 under this chapter, including but not limited to the

3 following considerations and required findings:

4 (1) the relationship of the health services being

5 reviewed to the applicable health systems plan and annual

6 implementation plan developed pursuant to Title XV of the

7 Public Health Service Act, as amended;

8 (2) the relationship of services reviewed to the

9 long-range development plan, if any, of the person providing

10 or proposing the services;

11 (3) the need that the population served or to be

12 served by the services has for the services;

13 (4) the availability of less costly QUALITY EQUIVALENT

14 or more effective alternative methods of providing such

15 services;

16 (5) the immediate and long-term financial feasibility

17 of the proposal as well as the probable impact of the

18 proposal on the costs of and charges for providing health

19 services by the person proposing the health services;

20 (6) the relationship and financial impact of the

21 services proposed to be provided to the existing health care

22 system of the area in which such services are proposed to be

23 provided;

24 (7) the availability of resources, including health

25 manpower, management personnel, and funds for capital and

1 operating needs for the provision of services proposed to be
 2 provided and the availability of alternative uses of such
 3 resources for the provision of other health services:

4 (8) the relationships, including the organizational
 5 relationships, of the health services proposed to be provided
 6 to ancillary or support services;

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

14 (10) the special needs and circumstances of health
 15 maintenance organizations for which assistance may be
 16 provided under Title XIII of the Public Health Service Act.
 17 Such needs and circumstances include the needs of and costs
 18 to members and projected members of the health maintenance
 19 organization in obtaining health services and the potential
 20 for a reduction in the use of inpatient care in the
 21 community through an extension of preventive health services
 22 and the provision of more systematic and comprehensive
 23 health services.

24 (11) the special needs and circumstances of biomedical
 25 and behavioral research projects which are designed to meet

1 a national need and for which local conditions offer special
 2 advantages;

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

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

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

16 Section 15. Section 50-5-305, MCA, is amended to read:

17 "50-5-305. Period of validity of approved application.
 18 ~~An approved application for construction is valid for 1 year~~
 19 ~~from the date of issue but may be extended by the department~~
 20 ~~for a period of 6 months. A certificate of need shall~~
 21 ~~terminate 1 year after the date of issuance unless:~~

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

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

5 Section 16. Section 50-5-306, MCA, is amended to read:

6 "50-5-306. Right to hearing and appeal. ~~(1) If the~~
 7 ~~department disapproves an application for construction of a~~
 8 ~~facility, it shall notify the applicant of its actions and~~
 9 ~~afford the applicant an opportunity to request a hearing~~
 10 ~~before the board.~~

11 ~~(2) When this hearing is desired, the applicant shall~~
 12 ~~notify the department in writing within 15 days after the~~
 13 ~~notice of disapproval is received.~~

14 ~~(3) If the decision after hearing is adverse, the~~
 15 ~~applicant may appeal to the district court as provided in~~
 16 ~~title 24, chapter 4, part 7. (1) THE APPLICANT OR A HEALTH~~
 17 ~~SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC~~
 18 ~~HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC~~
 19 ~~HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION. IF~~
 20 ~~THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR~~
 21 ~~DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected~~
 22 ~~person may, for good cause, request the department to~~
 23 ~~reconsider its decision at a public SUCH A hearing. The~~
 24 ~~department shall grant the request if the affected person~~
 25 ~~submits the request in writing showing good cause as defined~~

1 in rules adopted by the department and if the request is
 2 received by the department within 30 calendar days after the
 3 decision is announced. The public hearing to reconsider
 4 shall be held, if warranted OR REQUIRED, within 30 calendar
 5 days after its request. The department shall make its final
 6 decision and written findings of fact and conclusions of law
 7 in support thereof within 45 days after the conclusion of
 8 the reconsideration hearing. THE HEARING SHALL BE CONDUCTED
 9 IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

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

21 (3) The scope of the hearing before the board is
 22 limited to a review of the record upon which the department
 23 made its decision. THE BOARD, UPON REQUEST OF ANY PARTY TO
 24 AN APPEAL BEFORE THE BOARD, SHALL HEAR ORAL ARGUMENTS AND
 25 RECEIVE WRITTEN BRIEFS. Within 45 calendar days after the

1 conclusion of the public hearing, the board shall make and
 2 issue its decision, supported by written findings of fact
 3 and conclusions of law. The board may affirm the
 4 department's decision or remand it for further proceedings.
 5 The board may reverse or modify the department's decision if
 6 the appellant's rights have been prejudiced for any of the
 7 reasons found in 2-4-704.

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

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

15 Section 17. Section 50-5-307, MCA, is amended to read:

16 "50-5-307. Penalties---for---failure---to---obtain---prior
 17 approval [civil penalty -- injunction. Penalties for failure
 18 to---obtain---prior---approval---of---the---department---are---as---follows:

19 (1)---Any---person---who---constructs---any---new---health---care
 20 facility---as---defined---in---50-5-101---without---prior---approval---by
 21 the---department---is---guilty---of---a---misdemeanor---and---shall---be
 22 punished---by---a---fine---of---not---less---than---\$1,000---or---more---than
 23 \$10,000, the fine to be deposited in the state general fund,
 24 and this new facility is not eligible for licensure as a
 25 health care facility as defined in 50-5-101.

1 (2)---Any---person---who---expands,---remodels,---or---alters---an
 2 existing health care facility as defined in 50-5-101 without
 3 prior written approval by the department is guilty of a
 4 misdemeanor and shall be punished by a fine of not less than
 5 \$1,000 or more than \$10,000, the fine to be deposited in the
 6 state general fund. (1) A person who violates the terms of
 7 59-5-301 50-5-301 is subject to a civil penalty of not less
 8 than \$1,000 or more than \$10,000. Each day of violation
 9 constitutes a separate offense. The department or, upon
 10 request of the department, the county attorney of the county
 11 where the health care facility in question is located may
 12 petition the district court to impose, assess, and recover
 13 the civil penalty. Money collected as a civil penalty shall
 14 be deposited in the state general fund.

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

20 NEW SECTION. Section 18. Special circumstances. In
 21 the event of destruction of any part of a health care
 22 facility as a result of fire, storm, civil disturbance, or
 23 any act of God, the department may issue a certificate of
 24 need for only the replacement of the previously existing
 25 facility or portion thereof.

1 Section 19. Section 50-5-402, MCA, is amended to read:

2 "50-5-402. Administration of state medical facility
3 plan. The department is the principal state agency for
4 establishing and administering a statewide plan for
5 construction, modernization, alteration, equipment,
6 maintenance, or operation of a ~~hospital, medical, or related~~
7 health care facility for provision of care, treatment,
8 diagnosis, rehabilitation, training, or related service.
9 This plan is to be known as the state medical facility
10 plan."

11 Section 20. Section 50-5-404, MCA, is amended to read:

12 "50-5-404. Duties of department. The department shall:
13 ~~{1}--adopt--necessary--rules--for--the--administration--of~~
14 ~~this--part~~

15 ~~{2}{1}~~ prescribe minimum standards for the maintenance
16 and operation of ~~hospital, medical, and related~~ health care
17 facilities receiving federal aid for construction under the
18 state plan;

19 ~~{3}{2}~~ inventory existing hospital, medical, and
20 related health care facilities;

21 ~~{4}{3}~~ survey the need for construction or alteration
22 of ~~hospital~~ health care facilities;

23 ~~{5}{4}~~ develop and administer a state plan for the
24 construction and alteration of public and other nonprofit
25 ~~hospital, medical, and related~~ health care facilities;

1 ~~{6}{5}~~ if desirable, enter into agreements for the
2 utilization of facilities and services of other departments,
3 agencies, and institutions, public or private;

4 ~~{7}{6}~~ accept and deposit with the state treasurer and
5 spend any ~~grant, gift, or contribution~~ made to meet costs of
6 carrying out this part;

7 ~~{8}{7}~~ prepare and review a construction program in
8 accordance with federal requirements that will provide
9 adequate ~~hospital, medical, and related~~ health care
10 facilities to people in the state providing, as far as
11 possible, for distribution throughout the state to make all
12 types of services reasonably acceptable available to all
13 persons;

14 ~~{9}{8}~~ submit to federal agencies state plans,
15 including those for the ~~hospital, medical, and related~~
16 health care facilities construction program and
17 modifications of it providing for the establishment and
18 operation of ~~hospital, medical, and related~~ health care
19 facilities construction activities in accordance with
20 federal requirements;

21 ~~{10}{9}~~ make application to the appropriate federal
22 agency for funds to assist in carrying out the survey and
23 planning activities;

24 ~~{11}{10}~~ after approval of a plan by the appropriate
25 federal agency, publish a description in newspapers having

1 general circulation throughout the state and make the plan
2 available upon request to all persons or organizations;

3 ~~(12)~~(11) inspect construction or alteration projects
4 approved by the appropriate federal agency and, if
5 satisfactory, certify that work has been performed on the
6 project or purchases made in accordance with approved plans
7 and specifications and that payment of federal funds is due
8 to the applicant;

9 ~~(13)~~(12) require reports and make inspections and
10 investigations as necessary or required by the federal
11 agency;

12 ~~(14)~~(13) contract with consultants for services which
13 are performed on a part-time or fee-for-service basis not
14 involving administrative duties."

15 Section 21. Section 50-5-405, MCA, is amended to read:

16 "50-5-405. Contracts with federal agencies. The
17 department may enter into contracts and agreements with
18 agencies of the federal government to secure the benefit of
19 federal programs to provide adequate medical--and--related
20 health care facilities and services."

21 Section 22. Section 50-5-408, MCA, is amended to read:

22 "50-5-408. Applications for construction projects.
23 Applications for ~~hospital--medical--and--related~~ health care
24 facilities construction projects may be submitted by a state
25 agency, a political subdivision, or by any public or

1 nonprofit agency authorized to construct and operate a
2 ~~hospital--medical--or--related~~ health care facility."

3 Section 23. Section 50-5-411, MCA, is amended to read:

4 "50-5-411. Consolidated applications. (1) Boards of
5 county commissioners of two or more counties may submit a
6 consolidated application for a single ~~hospital--medical~~
7 health care facility, or health center serving each of the
8 counties included in the application.

9 (2) Any statutes investing counties with powers to
10 construct, maintain, and operate ~~hospitals--or--medical~~ health
11 care facilities directly or by lease or contract may be
12 utilized for this joint action.

13 (3) All statutes governing submission of questions of
14 establishing a ~~hospital--or--medical~~ health care facility,
15 ~~hospital--or--medical~~ health care facility construction,
16 issuance of bonds, or method of operation and requiring a
17 majority vote of taxpayers on the questions shall apply.

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

22 Section 24. Saving clause. This act does not affect
23 certificate of need applications received and declared
24 complete or granted by the department before the effective
25 date of this act.

1 Section 25. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 26. Codification. (1) It is intended that
8 section 11 of this act be codified as an integral part of
9 Title 50, chapter 5, part 2; and the provisions contained in
10 Title 50, chapter 5, parts 1 through 4, apply to section 11
11 of this act.

12 (2) It is intended that section 18 of this act be
13 codified as an integral part of Title 50, chapter 5, part 3;
14 and the provisions contained in Title 50, chapter 5, parts 1
15 through 4, apply to section 18 of this act.

16 Section 27. Repealer. Sections 50-5-102, 50-5-205,
17 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and
18 50-7-101 through 50-7-309, MCA, are repealed.

-End-

1 STATEMENT OF INTENT RE: SB 100

2
3
4 A statement of intent is required for this bill because
5 it delegates rulemaking authority to the Department of
6 Health and Environmental Sciences. This bill is intended to
7 expand the authority of the Department of Health and
8 Environmental Sciences to license health care facilities in
9 order to cover additional health care facilities, and to
10 revise the requirements of specific health care facilities
11 to obtain a certificate of need. Generally the Department of
12 Health and Environmental Sciences is intended to have the
13 authority to amend and update existing licensure rules and
14 to adopt new rules for licensure to conform with the
15 mandates of P.L. 92-603 and the Social Security Act, titles
16 V, XVIII, and XIX.

17 In the same spirit, the Department may write and adopt
18 rules, in accordance with the Montana Administrative
19 Procedure Act, to insure the implementation of a state
20 certificate of need program which meets the minimum
21 standards of P.L. 93-641, the National Health Planning and
22 Resources Development Act, and which is acceptable to the
23 Secretary of the Department of Health, Education and
24 Welfare. This program is aimed at insuring that only new
25 institutional health services, expenditures in excess of

1 \$150,000 made to prepare for a new institutional health
2 service, or arrangements and commitments made to finance a
3 new institutional health service which are found by the
4 Department of Health and Environmental Sciences to be needed
5 may be granted a certificate of need and that only those
6 services which are granted a certificate of need may be
7 offered to the public.

8 Section 2 if the primary, broad-based source of
9 rulemaking authority for the entire chapter. Insofar as
10 licensing and certification of health care facilities are
11 concerned, Title 50, chapter 5, part 2, this section does
12 not add any new discretionary authority beyond that already
13 authorized for the Department, with the exception that this
14 section is intended to allow the setting of certification
15 standards for additional types of health care facilities,
16 such as health maintenance organizations and adult day care
17 centers not currently covered by law. This section is not
18 intended to expand the existing rulemaking authority under
19 part 4 except for rules specific to the additional health
20 care facilities that will be covered.

21 Section 2 is intended to clearly authorize rulemaking
22 authority to implement part 3. As a minimum, it is intended
23 that the Department may adopt rules covering the following:
24 1. procedures and assurances required by 42 CFR
25 123.401 through 42 CFR 123.411 and any subsequent rules

1 replacing or augmenting them;

2 2. procedures to be followed during the review
3 process, including any interrelationships with review being
4 conducted by a health systems agency; and

5 3. the effect on an application for certificate of
6 need if the Department fails to decide whether to approve or
7 disapprove the application within the time period set for
8 review.

9 Section 5 is intended to allow the Department to
10 require health care facilities to keep records and file
11 reports with the Department containing information relevant
12 to licensing, certification, statewide health planning, and
13 resources development.

14 Section 9 is not intended to be construed to add new
15 rulemaking authority beyond what is currently authorized for
16 the Department. The rules referred to in the section refer
17 to federal rules implementing the federal statute cited in
18 this section.

19 Section 10 is intended to retain existing authority to
20 set a licensing standards except that these standards may be
21 set for the new types of health care facilities added by
22 this bill.

23 Section 13 is intended to authorize the Department to
24 prescribe by rule the form of letters of intent and
25 applications for certificate of need and to specify what

1 information should be provided in each. This is further
2 specific authority for rules governing a portion of the
3 review process. The procedure for the entire review process
4 is intended to be detailed under the authority delegated by
5 Section 2.

6 Section 14 is explicit as to what review criteria,
7 required findings, and standards must be included in
8 Department rules adopted to implement the act; however, the
9 Department may, within the scope of this section, adopt
10 rules to more clearly define the criteria enumerated in this
11 section.

12 Section 15 allows the Department to establish by rule
13 what will constitute "good cause" to extend the period for
14 which a certificate of need is valid.

15 Section 16 is intended to permit the Department to
16 define what will constitute "good cause" to grant a
17 reconsideration hearing, in order to prevent hearings based
18 on frivolous grounds and to contain administrative costs.
19 This section is also intended to authorize additional
20 specific procedures for administrative hearings, at both the
21 Department and Board levels, than are provided in the
22 Montana Administrative Procedure Act but which are
23 consistent with the provisions of MAPA.

24 Section 20 is intended to apply specifically to Title
25 50, chapter 5, part 4, and does not broaden existing

1 rulemaking authority except where it applies to the new
2 types of health care facilities added by this bill.

3 First adopted by the SENATE COMMITTEE ON PUBLIC HEALTH,
4 WELFARE, AND SAFETY on February 14, 1979.

1 SENATE BILL NO. 100

2 INTRODUCED BY NORMAN, MENAHAN

3 BY REQUEST OF

4 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
7 RELATING TO HEALTH CARE FACILITIES, DEFINING HEALTH CARE
8 FACILITIES TO INCLUDE AMONG OTHER ENTITIES HOME HEALTH
9 AGENCIES AND ADULT DAY-CARE CENTERS AND ELIMINATING EXISTING
10 LAWS DEALING WITH HOME HEALTH AGENCIES; PROVIDING FOR A
11 CERTIFICATE OF NEED AND FOR REVIEW OF APPLICATIONS FOR
12 CERTIFICATES OF NEED AND APPEAL PROCEDURES, PROVIDING
13 GUIDELINES FOR DENIAL, SUSPENSION, OR REVOCATION OF HEALTH
14 CARE FACILITY LICENSES; PROVIDING FOR CIVIL PENALTIES;
15 AMENDING SECTIONS 50-5-101, 50-5-103 THROUGH 50-5-106,
16 50-5-108, 50-5-109, 50-5-201, 50-5-204, 50-5-207, 50-5-301,
17 50-5-302, 50-5-304 THROUGH 50-5-307, 50-5-402, 50-5-404,
18 50-5-405, 50-5-408, AND 50-5-411, MCA; AND REPEALING
19 SECTIONS 50-5-102, 50-5-205, 50-5-206, 50-5-209, 50-5-303,
20 50-5-401, 50-5-412, AND 50-7-101 THROUGH 50-7-309, MCA."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 50-5-101, MCA, is amended to read:

24 "50-5-101. Definitions. As used in parts 1 through 3 ½
25 of this chapter, unless the context clearly indicates

1 otherwise, the following definitions apply:

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

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

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

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

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

24 ~~(6) "Construction" means the erection, expansion,~~
25 ~~remodeling, or alteration of a new or existing facility; the~~

1 capital expenditure for which amounts to \$50,000 or more in
 2 any 12-month period or any substantial change in services
 3 any increase or decrease in the number of beds in excess of
 4 10% of the licensed capacity of the facility or in excess of
 5 10 beds, whichever is the lesser, or any purchase of
 6 therapeutic or diagnostic equipment (excluding replacement
 7 of existing equipment) in any 12-month period at a cost
 8 exceeding 2% of the facility's total operating costs for the
 9 most recently completed fiscal year up to a maximum of
 10 \$100,000 or exceeding \$10,000, whichever is larger. All
 11 exemptions from this definition must nevertheless be
 12 consistent with the state medical facilities plan of the
 13 department.

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

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

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

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

25 (10) "Health care facility" means a hospital,

1 hospital-related facility, or long-term care facility, any
 2 institution, building, or agency or portion thereof, private
 3 or public, excluding federal facilities, whether organized
 4 for profit or not, used, operated, or designed to provide
 5 health services, medical treatment, or nursing,
 6 rehabilitative, or preventive care to any person or persons.
 7 The term does not include offices of private physicians or
 8 dentists. The term includes but is not limited to ambulatory
 9 surgical facilities, health maintenance organizations, home
 10 health agencies, hospitals, infirmaries, kidney treatment
 11 centers, long-term care facilities, mental health centers,
 12 outpatient facilities, public health centers, rehabilitation
 13 facilities, and adult day-care centers.

14 (11) "Health maintenance organization" means a public
 15 or private organization organized as defined in 42 U.S.C.
 16 300e, as amended.

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

24 (13) "Hospital" means a health-care facility
 25 licensed by the department to provide providing, by or under

1 the supervision of licensed physicians, services for medical
 2 diagnosis, treatment, rehabilitation, and care of injured,
 3 disabled, or sick persons. Services provided may or may not
 4 include obstetrical care, emergency care, or any other
 5 service as allowed by state licensing authority. A health
 6 care--facility--in-order-to-be-licensed-as-a hospital--must
 7 have has an organized medical staff--provide which is on
 8 call and available within 20 minutes, 24 hours per day, 7
 9 days per week, and provides 24-hour nursing care by licensed
 10 professional registered nurses, and be--in--compliance--with
 11 the--rules-for-licensed-hospitals-adopted-by-the-department.
 12 This term includes hospitals specializing in providing
 13 health services for psychiatric, mentally retarded, and
 14 tubercular patients.

15 (7)--"Hospital-related--facility"--means--a--facility
 16 licensed--by-the-department-to-provide-diagnosis--treatment,
 17 medical--or--nursing--care--or--medically-related-rehabilitation
 18 services--Such-facilities-include-but--are--not--limited--to
 19 outpatient-facilities, public-health-centers, rehabilitation
 20 facilities, long-term-care-facilities, infirmaries, mental
 21 health-and-mental-retardation-institutions, alcoholism--and
 22 drug--dependency-centers, and-half-way-houses--A-health-care
 23 facility--in-order-to-be-licensed--as--a--"hospital-related
 24 facility"--shall--be-in-compliance-with-the-regulations-for
 25 the-specific-category-of-facility-adopted-by-the-department.

1 (8)(14) "Infirmery" means a facility located in a
 2 university, college, government institution, or industry for
 3 the treatment of the sick or injured, with the following
 4 subdefinitions:

5 (9)(a) an "infirmery--A" "infirmery--A" provides
 6 outpatient and inpatient care;

7 (10)(b) an "infirmery--B" "infirmery--B" provides
 8 outpatient care only.

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

12 (11)(16) (a) "Long-term care facility" means a piece
 13 facility or part thereof which provides skilled nursing care
 14 or intermediate nursing care to a total of two or more
 15 persons or personal care to more than three persons who--by
 16 reason-of--illness-or-disability--are-unable-to-properly-care
 17 for--themselves--and are not related to the owner or
 18 administrator by blood or marriage and--includes--the
 19 facilities--defined-as-follows, with these degrees of care
 20 defined as follows:

21 (i) "Skilled nursing facilities"--are--establishments
 22 furnishing--continuous--skilled--nursing--care--and--related
 23 services--24-hours-a-day care" means the provision of nursing
 24 care services, health-related services, and social services
 25 under the supervision of a licensed registered nurse on a

1 24-hour basis.

2 (ii) "Intermediate nursing care" facilities--A--are
3 establishments--furnishing--limited-skilled-nursing-care-and
4 person-care means the provision of nursing care services,
5 health-related services, and social services under the
6 supervision of a licensed nurse to patients not requiring
7 24-hour nursing care.

8 (iii) "Intermediate----care----facilities--B"----are
9 establishments-providing-only-person-care-and-services--to
10 residents. "Personal care" means the provision of services
11 and care which do not require nursing skills to residents
12 needing some assistance in performing the activities of
13 daily living.

14 (iv) "Combination---facilities"---are---establishments
15 providing--two--or--more--of--the--following--services--skilled
16 nursing-care-and-intermediate-care--A-and-B.

17 (b) Hotels, motels, boardinghouses, boarding homes,
18 roominghouses, or similar accommodations providing for
19 transients, students, or persons not requiring institutional
20 health care are not considered--to--be long-term care
21 facilities.

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

1 services.

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

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

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

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

22 (d) health services which are offered in or through a
23 health care facility and which were not offered on a regular
24 basis in or through such health care facility within the
25 12-month period prior to the time such services would be

1 offered or the deletion by a health care facility of a
 2 service previously offered:

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

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

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

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

13 (22) "Outpatient facility--A" means a physically
 14 separate component of a licensed hospital or a medical
 15 clinic or other establishment owned or operated by a
 16 licensed physician which has an observation bed or beds and
 17 provides to patients not requiring hospitalization the
 18 services of persons licensed to practice medicine or
 19 dentistry in the state of Montana. No patient may be allowed
 20 to remain in an outpatient facility for more than 6 hours a
 21 facility, located in or apart from a hospital, providing
 22 under the direction of a licensed physician, either
 23 diagnosis or treatment, or both, to ambulatory patients in
 24 need of medical, surgical, or mental care. An out-patient
 25 OUTPATIENT facility may have observation beds.

1 (23) "Outpatient facility--B" means a facility operated
 2 physically apart from a hospital other than a medical
 3 clinic or other establishment owned or operated by a
 4 licensed physician which provides to ambulatory patients
 5 not requiring hospitalization the services of persons
 6 licensed to practice medicine or dentistry in Montana but
 7 which does not have an observation bed or beds as defined in
 8 subsection (22).

9 (24) "Patient" means an individual obtaining services,
 10 including skilled nursing care, from a health care facility.

11 (25) "Person" means an individual, firm,
 12 partnership, association, organization, agency, institution,
 13 corporation, trust, estate, or governmental unit, whether
 14 organized for profit or not.

15 (26) "Public health center" means a publicly owned
 16 facility utilized by a local health unit for the provision
 17 providing of public health services, including related
 18 public facilities such as laboratories, clinics, and
 19 administrative offices operated in connection with a public
 20 health center.

21 (27) "Rehabilitation facility" means a facility
 22 providing community service which is operated for the
 23 primary purpose of assisting in the rehabilitation of
 24 disabled persons through an integrated program under
 25 competent professional supervision including medical

1 ~~services--and--evaluation--and--psychologically--social--and~~
 2 ~~vocational--services--and--evaluation~~ by providing
 3 comprehensive medical evaluations and services,
 4 psychological and social services, or vocational evaluation
 5 and training or any combination of these services and in
 6 which the major portion of the services is furnished within
 7 the facility.

8 ~~(18)(27)~~ "Resident" means a person who is in a
 9 long-term care facility as a patient or for intermediate or
 10 personal care.

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

13 Section 2. Section 50-5-103, MCA, is amended to read:

14 "50-5-103. Rules and standards. (1) The department
 15 shall promulgate and adopt and publish rules and minimum
 16 standards for ~~licensure of all hospitals and~~
 17 hospital-related facilities for implementation of parts 1
 18 through 4.

19 ~~(2) Rules relating to building, equipment, and fire~~
 20 ~~and life safety shall be covered by the state building code.~~
 21 Any facility covered by this chapter shall comply with the
 22 state and federal requirements relating to construction,
 23 equipment, and fire and life safety.

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

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

12 Section 4. Section 50-5-105, MCA, is amended to read:

13 "50-5-105. Discrimination among patients of physicians
 14 prohibited. ~~(1) All phases of the operation of a health care~~
 15 facility shall be without discrimination against anyone on
 16 the basis of race, creed, religion, color, national origin,
 17 sex, age, marital status, physical or mental handicap, or
 18 political ideas.

19 ~~(2) No person who operates a facility may discriminate~~
 20 among the patients of licensed physicians. The free and
 21 confidential professional relationship between a licensed
 22 physician and patient shall continue and remain unaffected.
 23 ~~Physicians shall continue to have direction over their~~
 24 ~~patients."~~

25 Section 5. Section 50-5-106, MCA, is amended to read:

1 "50-5-106. ~~Information--received-confidentiality~~ Records
 2 ~~and reports required of health care facilities --~~
 3 ~~confidentiality. Health care facilities shall keep records~~
 4 ~~and make reports as required by the department. Before~~
 5 ~~February 1 of each year, every licensed health care facility~~
 6 ~~shall submit an annual report for the preceding calendar~~
 7 ~~year to the department. The report shall be on forms and~~
 8 ~~contain information specified by the department. Information~~
 9 ~~received by the department or board through reports,~~
 10 ~~inspection inspections, or provisions of parts 1 through--3~~
 11 ~~and 2 may not be disclosed in a way which would identify~~
 12 ~~individuals or facilities except in a proceeding involving~~
 13 ~~the question of licensure or as required by the federal~~
 14 ~~government for certification or preparation of a state plan~~
 15 ~~patients. A DEPARTMENT EMPLOYEE WHO DISCLOSES INFORMATION~~
 16 ~~WHICH WOULD IDENTIFY A PATIENT SHALL BE DISMISSED FROM~~
 17 ~~EMPLOYMENT AND SUBJECT TO THE PROVISION OF 45-7-401, UNLESS~~
 18 ~~THE DISCLOSURE WAS AUTHORIZED IN WRITING BY THE PATIENT, HIS~~
 19 ~~GUARDIAN, OR HIS AGENT. Information and statistical reports~~
 20 ~~from health care facilities which are considered necessary~~
 21 ~~by the department for health planning and resource~~
 22 ~~development activities will be made available to the public~~
 23 ~~and the health planning agencies within the state.~~
 24 ~~Applications by health care facilities for certificates of~~
 25 ~~need and any information relevant to review of these~~

1 ~~applications pursuant to part 3, shall be accessible to the~~
 2 ~~public."~~

3 Section 6. Section 50-5-108, MCA, is amended to read:
 4 "50-5-108. Injunction. The department, on advice of
 5 the attorney general, may ~~maintain~~ bring an action for
 6 injunction or other process against any person to restrain
 7 or prevent the establishment, conduct, management, or
 8 operation of a facility which is endangering--health--and
 9 welfare in violation of any provision of parts 1 or 4 of
 10 this chapter."

11 Section 7. Section 50-5-109, MCA, is amended to read:
 12 "50-5-109. Penalty. A person who violates provisions
 13 of parts 1 through 3 ~~or 4~~ is guilty of a misdemeanor. On
 14 conviction he shall be fined not more than \$100 for the
 15 first offense and not more than \$300 for each subsequent
 16 offense. ~~Each day of a continuing violation after conviction~~
 17 ~~is a separate offense."~~

18 Section 8. Section 50-5-201, MCA, is amended to read:
 19 "50-5-201. License requirements. ~~11. A licensee who~~
 20 ~~contemplates construction of or alteration or addition to a~~
 21 ~~health care facility shall submit plans and specifications~~
 22 ~~to the department for preliminary inspection and approval~~
 23 ~~prior to commencing construction.~~

24 ~~11(2)~~ No person may operate a health care facility
 25 unless the facility is licensed by the department. Licenses

1 shall be for 1 year unless issued for a shorter period. A
2 license is valid only for the person and premises for which
3 it was issued. A license may not be sold, assigned, or
4 transferred.

5 ~~(2)(3)~~ Upon discontinuance of the operation or of
6 transfer of ownership of a facility, the license must be
7 returned to the department.

8 ~~(3)(4)~~ Licenses shall be displayed in a conspicuous
9 place near ~~where patients or residents are admitted~~ the
10 admitting office of the facility."

11 Section 9. Section 50-5-204, MCA, is amended to read:

12 "50-5-204. Issuance and renewal of licenses. (1) On
13 receipt of a new or renewal application, the department or
14 its authorized agent shall inspect the facility. If minimum
15 standards are met and the proposed staff is qualified, the
16 department shall issue a license for 1 year. If minimum
17 standards are not met, the department may issue a
18 provisional license for less than 1 year if operation will
19 not result in undue hazard to patients or residents or if
20 the demand for accommodations offered is not met in the
21 community. The minimum standards which home health agencies
22 must meet in order to be licensed shall be as outlined in 42
23 U.S.C. 1395 x(a), as amended, and in rules implementing it
24 which add minimum standards.

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

1 access to all records shall be granted at all reasonable
2 times."

3 Section 10. Section 50-5-207, MCA, is amended to read:

4 "50-5-207. Denial, suspension, or revocation of
5 ~~hospital or hospital-related health care facility license --~~
6 ~~provisional license.~~ (1) The department may deny, suspend,
7 or revoke a ~~hospital or hospital-related health care~~ health care
8 facility license if it finds there has been substantiated
9 failure to comply with the provisions of parts 1 through 3
10 any of the following circumstances exist:

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

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

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

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

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

25 (f) There is misappropriation of the property or funds

1 of a patient or resident.

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

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

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

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

11 NEW SECTION. Section 11. Civil penalty -- injunction.
12 (1) A person who violates the terms of [Title 50, chapter 5,
13 part 2,] is subject to a civil penalty not to exceed \$1,000.
14 Each day of violation constitutes a separate violation. The
15 department or, upon request of the department, the county
16 attorney of the county where the health care facility in
17 question is located may petition the district court to
18 impose, assess, and recover the civil penalty. Money
19 collected as a civil penalty shall be deposited in the state
20 general fund.

21 (2) The department or, upon request of the department,
22 the county attorney of the county where the health care
23 facility in question is located may bring an action to
24 enjoin a violation of any provision of [Title 50, chapter 5,
25 part 2], in addition to or exclusive of the remedy in

1 subsection (1).

2 Section 12. Section 50-5-301, MCA, is amended to read:
3 "50-5-301. Preliminary--submission--of--plans--for
4 approval when application is required. (1)--The--department
5 may--adopt--rules--to--require--an--applicant--or--licensee--who
6 contemplates construction of alteration or addition to a
7 health-care facility to submit plans and specifications to
8 the department for preliminary inspection and approval prior
9 to commencing construction.

10 (2)--Approval may be given only if the plans and
11 specifications conform to the state or the municipal
12 building code which applies to the facility. Unless an
13 application has been submitted to and a certificate of need
14 granted by the department, no person may initiate any of the
15 following:

16 (1) a new institutional health service as defined in
17 50-5-101;

18 (2) any expenditure by or on behalf of a health care
19 facility in excess of \$150,000 made in preparation for the
20 offering or development of a new institutional health
21 service and any arrangement or commitment made for financing
22 the offering or development of the new institutional health
23 service. Expenditures made in the preparation for the
24 offering of a new institutional health service shall include
25 expenditures for architectural designs, preliminary plans,

1 ~~working drawings, specifications, studies, and surveys.~~"

2 Section 13. Section 50-5-302, MCA, is amended to read:

3 "50-5-302. ~~Form and content of application for~~

4 ~~approval Application and review process. (1) An application~~

5 ~~for approval must be submitted to the department in a form~~

6 ~~together with information as the department may prescribe~~

7 ~~(2) The application shall include:~~

8 ~~(a) a narrative description of the proposed project;~~

9 ~~(b) the number and type of beds and/or services to be~~

10 ~~provided;~~

11 ~~(c) the estimated cost;~~

12 ~~(d) the source of financing;~~

13 ~~(e) the expected time for completion of the proposed~~

14 ~~project; and~~

15 ~~(f) a site plan drawing showing major dimensions of~~

16 ~~the proposed project. (1) Any person intending to initiate~~

17 ~~an activity for which a certificate of need is required~~

18 ~~shall submit a letter of intent to the department. After~~

19 ~~receipt, the department shall send the applicant a form~~

20 ~~requiring the submission of information considered necessary~~

21 ~~by the department to determine if the proposed activity~~

22 ~~meets the standards in 50-5-304. The form and content of the~~

23 ~~notification of intent and applications for certificates of~~

24 ~~need shall be prescribed by rule by the department.~~

25 ~~(2) Within 15 calendar days after receipt of the~~

1 ~~application, the department shall determine whether it~~

2 ~~contains sufficient information to determine if the proposed~~

3 ~~activity meets the standards in 50-5-304. If the application~~

4 ~~is found incomplete, the department shall request additional~~

5 ~~information.~~

6 ~~(3) After the application has been designated~~

7 ~~complete, notification must be sent to the applicant and all~~

8 ~~other affected persons regarding the department's projected~~

9 ~~review of the application and the review period time~~

10 ~~schedule. The review period for the application may be no~~

11 ~~longer than 90 calendar days after the notice is sent unless~~

12 ~~a longer period is agreed to by the applicant. During the~~

13 ~~review period a public hearing may be held if requested by~~

14 ~~one or more affected persons.~~

15 ~~(4) The department shall, after considering all~~

16 ~~comments received during the review period, issue a~~

17 ~~certificate of need, with or without conditions, or reject~~

18 ~~the application. If the department fails to act within the~~

19 ~~designated period and an extension has not been granted, the~~

20 ~~failure to act constitutes disapproval of the application.~~

21 ~~The department shall notify the applicant and affected~~

22 ~~persons of its decision."~~

23 Section 14. Section 50-5-304, MCA, is amended to read:

24 "50-5-304. Requirements for approval Review criteria:

25 required findings, and standards. (1) No application may be

1 approved-unless-the-action-proposed+

2 (a)--is-necessary-to-provide-required--health--care--in

3 the-area-to-be-served+

4 (b)--can--be--economically-accomplished-and-maintained+

5 and

6 (c)--will-contribute--to--the--orderly--development--of

7 adequate-and-effective-health-services+

8 (2)--in---making---the---determinations---enumerated---in

9 subsection-(1)--the-following-shall-be-considered+

10 (a)--the--compatibility--with--needs---shown---in---the

11 appropriate--state--plan-provided-by-these-statutes-relating

12 to-facilities--contained-in-part-4-of-this-chapter+

13 (b)--the-availability-of-facilities-or--services--which

14 may-serve-as-alternates-or-substitutes+

15 (c)--the-need-for-special-equipment-and-services-in-the

16 area+

17 (d)--the-possible-economies-and-improvement-in-services

18 to--be--anticipated--from--the-operation-of--combined-central

19 services-including-but-not-limited-to-laboratory--research--

20 radiology--pharmacy--laundry--and-purchasing+

21 (e)--the-adequacy-of-financial-resources-and-sources-of

22 future-revenue--and

23 (f)--the-availability-of--sufficient--manpower-in-the

24 several-professional-disciplines. The department shall by

25 rule promulgate and utilize, as appropriate, specific

1 criteria for reviewing certificate of need applications

2 under this chapter, including but not limited to the

3 following considerations and required findings:

4 (1) the relationship of the health services being

5 reviewed to the applicable health systems plan and annual

6 implementation plan developed pursuant to Title XV of the

7 Public Health Service Act, as amended;

8 (2) the relationship of services reviewed to the

9 long-range development plan, if any, of the person providing

10 or proposing the services;

11 (3) the need that the population served or to be

12 served by the services has for the services;

13 (4) the availability of less costly QUALITY EQUIVALENT

14 or more effective alternative methods of providing such

15 services;

16 (5) the immediate and long-term financial feasibility

17 of the proposal as well as the probable impact of the

18 proposal on the costs of and charges for providing health

19 services by the person proposing the health service;

20 (6) the relationship and financial impact of the

21 services proposed to be provided to the existing health care

22 system of the area in which such services are proposed to be

23 provided;

24 (7) the availability of resources, including health

25 manpower, management personnel, and funds for capital and

1 operating needs for the provision of services proposed to be
 2 provided and the availability of alternative uses of such
 3 resources for the provision of other health services;

4 (8) the relationships, including the organizational
 5 relationship, of the health services proposed to be provided
 6 to ancillary or support services;

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

14 (10) the special needs and circumstances of health
 15 maintenance organizations for which assistance may be
 16 provided under Title XIII of the Public Health Service Act.
 17 Such needs and circumstances include the needs of and costs
 18 to members and projected members of the health maintenance
 19 organization in obtaining health services and the potential
 20 for a reduction in the use of inpatient care in the
 21 community through an extension of preventive health services
 22 and the provision of more systematic and comprehensive
 23 health services.

24 (11) the special needs and circumstances of biomedical
 25 and behavioral research projects which are designed to meet

1 a national need and for which local conditions offer special
 2 advantages;

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

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

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

16 Section 15. Section 50-5-305, MCA, is amended to read:
 17 "50-5-305. Period of validity of approved application.
 18 An approved application for construction is valid for 1 year
 19 from the date of issue but may be extended by the department
 20 for a period of 6 months. A certificate of need shall
 21 terminate 1 year after the date of issuance unless:

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

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

5 Section 16. Section 50-5-306, MCA, is amended to read:

6 "50-5-306. Right to hearing and appeal. ~~{1}--If--the~~
 7 ~~department--disapproves--an--application--for--construction--of--a~~
 8 ~~facility--it--shall--notify--the--applicant--of--its--actions--and~~
 9 ~~afford--the--applicant--an--opportunity--to--request--a--hearing~~
 10 ~~before--the--board.~~

11 ~~{2}--When--this--hearing--is--desired--the--applicant--shall~~
 12 ~~notify--the--department--in--writing--within--15--days--after--the~~
 13 ~~notice--of--disapproval--is--received.~~

14 ~~{3}--If--the--decision--after--hearing--is--adverse--the~~
 15 ~~applicant--may--appeal--to--the--district--court--as--provided--in~~
 16 ~~Title--27--chapter--47--part--7.~~ (1) THE APPLICANT OR A HEALTH
 17 SYSTEMS AGENCY DESIGNATED PURSUANT TO TITLE XV OF THE PUBLIC
 18 HEALTH SERVICE ACT MAY REQUEST AND SHALL BE GRANTED A PUBLIC
 19 HEARING BEFORE THE DEPARTMENT TO RECONSIDER ITS DECISION. IF
 20 THE REQUEST IS RECEIVED BY THE DEPARTMENT WITHIN 30 CALENDAR
 21 DAYS AFTER THE DECISION IS ANNOUNCED. Any OTHER affected
 22 person may, for good cause, request the department to
 23 reconsider its decision at a public SUCH A hearing. The
 24 department shall grant the request if the affected person
 25 submits the request in writing showing good cause as defined

1 in rules adopted by the department and if the request is
 2 received by the department within 30 calendar days after the
 3 decision is announced. The public hearing to reconsider
 4 shall be held, if warranted OR REQUIRED, within 30 calendar
 5 days after its request. The department shall make its final
 6 decision and written findings of fact and conclusions of law
 7 in support thereof within 45 days after the conclusion of
 8 the reconsideration hearing. THE HEARING SHALL BE CONDUCTED
 9 IN ACCORDANCE WITH 2-4-601 THROUGH 2-4-623.

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

21 (3) The scope of the hearing before the board is
 22 limited to a review of the record upon which the department
 23 made its decision. THE BOARD, UPON REQUEST OF ANY PARTY TO
 24 AN APPEAL BEFORE THE BOARD, SHALL HEAR ORAL ARGUMENTS AND
 25 RECEIVE WRITTEN BRIEFS. Within 45 calendar days after the

1 conclusion of the public hearing, the board shall make and
 2 issue its decisions supported by written findings of fact
 3 and conclusions of law. The board may affirm the
 4 department's decision or remand it for further proceedings.
 5 The board may reverse or modify the department's decision if
 6 the appellant's rights have been prejudiced for any of the
 7 reasons found in 2-4-104.

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

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

15 Section 17. Section 50-5-307, MCA, is amended to read:
 16 "50-5-307. Penalties---for---failure---to---obtain---prior
 17 approval civil penalty -- injunction. Penalties-for---failure
 18 to---obtain---prior---approval---of---the---department---are---as---follows:

19 (1) Any person who constructs any new health care
 20 facility as defined in 50-5-101 without prior approval by
 21 the department is guilty of a misdemeanor and shall be
 22 punished by a fine of not less than \$1,000 or more than
 23 \$10,000, the fine to be deposited in the state general fund,
 24 and this new facility is not eligible for licensure as a
 25 health care facility as defined in 50-5-101.

1 (2) Any person who expends, remodels, or alters an
 2 existing health care facility as defined in 50-5-101 without
 3 prior written approval by the department is guilty of a
 4 misdemeanor and shall be punished by a fine of not less than
 5 \$1,000 or more than \$10,000, the fine to be deposited in the
 6 state general fund. (1) A person who violates the terms of
 7 59-5-301 50-5-301 is subject to a civil penalty of not less
 8 than \$1,000 or more than \$10,000. Each day of violation
 9 constitutes a separate offense. The department or, upon
 10 request of the department, the county attorney of the county
 11 where the health care facility in question is located may
 12 petition the district court to impose, assess, and recover
 13 the civil penalty. Money collected as a civil penalty shall
 14 be deposited in the state general fund.

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

20 NEW SECTION. Section 18. Special circumstances. In
 21 the event of destruction of any part of a health care
 22 facility as a result of fire, storm, civil disturbance, or
 23 any act of God, the department may issue a certificate of
 24 need for only the replacement of the previously existing
 25 facility or portion thereof.

1 Section 19. Section 50-5-402, MCA, is amended to read:

2 "50-5-402. Administration of state medical facility
3 plan. The department is the principal state agency for
4 establishing and administering a statewide plan for
5 construction, modernization, alteration, equipment,
6 maintenance, or operation of a ~~hospital-medical-or-related~~
7 health care facility for provision of care, treatment,
8 diagnosis, rehabilitation, training, or related service.
9 ~~This plan is to be known as the state medical facility~~
10 plan."

11 Section 20. Section 50-5-404, MCA, is amended to read:

12 "50-5-404. Duties of department. The department shall:
13 ~~(1) adopt necessary rules for the administration of~~
14 ~~this part~~

15 ~~(2) prescribe minimum standards for the maintenance~~
16 ~~and operation of hospital-medical-end-related health care~~
17 ~~facilities receiving federal aid for construction under the~~
18 ~~state plan;~~

19 ~~(3) inventory existing hospital, medical, and~~
20 ~~related health care facilities;~~

21 ~~(4) survey the need for construction or alteration~~
22 ~~of hospital health care facilities;~~

23 ~~(5) develop and administer a state plan for the~~
24 ~~construction and alteration of public and other nonprofit~~
25 ~~hospital-medical-end-related health care facilities;~~

1 ~~(6) if desirable, enter into agreements for the~~
2 ~~utilization of facilities and services of other departments,~~
3 ~~agencies, and institutions, public or private;~~

4 ~~(7) accept and deposit with the state treasurer and~~
5 ~~spend any grant-gift-or-contribution made to meet costs of~~
6 ~~carrying out this part;~~

7 ~~(8) prepare and review a construction program in~~
8 ~~accordance with federal requirements that will provide~~
9 ~~adequate hospital-medical-end-related health care~~
10 ~~facilities to people in the state providing, as far as~~
11 ~~possible, for distribution throughout the state to make all~~
12 ~~types of services reasonably acceptable available to all~~
13 ~~persons;~~

14 ~~(9) submit to federal agencies state plans,~~
15 ~~including those for the hospital-medical-end-related~~
16 ~~health care facilities construction program and~~
17 ~~modifications of it providing for the establishment and~~
18 ~~operation of hospital-medical-end-related health care~~
19 ~~facilities construction activities in accordance with~~
20 ~~federal requirements;~~

21 ~~(10) make application to the appropriate federal~~
22 ~~agency for funds to assist in carrying out the survey and~~
23 ~~planning activities;~~

24 ~~(11) after approval of a plan by the appropriate~~
25 ~~federal agency, publish a description in newspapers having~~

1 general circulation throughout the state and make the plan
2 available upon request to all persons or organizations;

3 ~~(12)(11)~~ inspect construction or alteration projects
4 approved by the appropriate federal agency and, if
5 satisfactory, certify that work has been performed on the
6 project or purchases made in accordance with approved plans
7 and specifications and that payment of federal funds is due
8 to the applicant;

9 ~~(13)(12)~~ require reports and make inspections and
10 investigations as necessary or required by the federal
11 agency;

12 ~~(14)(11)~~ contract with consultants for services which
13 are performed on a part-time or fee-for-service basis not
14 involving administrative duties."

15 Section 21. Section 50-5-405, MCA, is amended to read:

16 "50-5-405. Contracts with federal agencies. The
17 department may enter into contracts and agreements with
18 agencies of the federal government to secure the benefit of
19 federal programs to provide adequate ~~medical--and--related~~
20 health care facilities and services."

21 Section 22. Section 50-5-408, MCA, is amended to read:

22 "50-5-408. Applications for construction projects.
23 Applications for ~~hospital--medical--and--related~~ health care
24 facilities construction projects may be submitted by a state
25 agency, a political subdivision, or by any public or

1 nonprofit agency authorized to construct and operate a
2 ~~hospital--medical--or--related~~ health care facility."

3 Section 23. Section 50-5-411, MCA, is amended to read:

4 "50-5-411. Consolidated applications. (1) Boards of
5 county commissioners of two or more counties may submit a
6 consolidated application for a single ~~hospital--medical~~
7 health care facility or health center serving each of the
8 counties included in the application.

9 (2) Any statutes investing counties with powers to
10 construct, maintain, and operate ~~hospitals--or--medical~~ health
11 care facilities directly or by lease or contract may be
12 utilized for this joint action.

13 (3) All statutes governing submission of questions of
14 establishing a ~~hospital--or--medical~~ health care facility,
15 ~~hospital--or--medical~~ health care facility construction,
16 issuance of bonds, or method of operation, and requiring a
17 majority vote of taxpayers on the questions shall apply.

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

22 Section 24. Saving clause. This act does not affect
23 certificate of need applications received and declared
24 complete or granted by the department before the effective
25 date of this act.

1 Section 25. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 26. Codification. (1) It is intended that
8 section 11 of this act be codified as an integral part of
9 Title 50, chapter 5, part 2; and the provisions contained in
10 Title 50, chapter 5, parts 1 through 4, apply to section 11
11 of this act.

12 (2) It is intended that section 18 of this act be
13 codified as an integral part of Title 50, chapter 5, part 3;
14 and the provisions contained in Title 50, chapter 5, parts 1
15 through 4, apply to section 18 of this act.

16 Section 27. Repealer. Sections 50-5-102, 50-5-205,
17 50-5-206, 50-5-209, 50-5-303, 50-5-401, 50-5-412, and
18 50-7-101 through 50-7-309, MCA, are repealed.

-End-