

CHAPTER NO. 347

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.

*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 4  
of this chapter, unless the context clearly indicates

1 otherwise, the following definitions apply:  
2 111 "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.  
6 121 "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.  
14 131 "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.  
19 141 "Board" means the board of health and  
20 environmental sciences, provided for in 2-15-2104.  
21 151 "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.  
24 121--"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 ten--of--the--licensed--capacity--of--the--facility--or--in--excess--of  
 5 20--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 \$10,000--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 departments

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, 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  
service as allowed by state licensing authority. A health  
care--facility--in-order-to-be-licensed-as-a hospital--must  
 have has an organized medical staff--provide which is on  
 call and available within 20 minutes, 24 hours per day, 7  
 days per week, and provides 24-hour nursing care by licensed  
 professional registered nurses--and be--in--compliance--with  
 the--rules-for-licensed-hospitals--adopted-by-the-department.  
 This term includes hospitals specializing in providing  
 health services for psychiatric, mentally retarded and  
 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  
 the--specific--category--of--facility--adopted--by--the--department.

1 181141 "Infirmary" 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 (a) "Infirmary-A" "Infirmary-A" provides  
 6 outpatient and inpatient care;

7 (b) "Infirmary-B" "Infirmary-B" provides  
 8 outpatient care only.

9 181151 "Kidney treatment center" means a facility which  
 10 specializes in treatment of kidney diseases, including  
 11 freestanding hemodialysis units.

12 181161 (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        (iii) "Intermediate nursing care" facilities--A--are  
 3     establishments--furnishing--limited-skilled-nursing--care--and  
 4     personnel--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 personnel 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 (22)(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 (18)(22) "Outpatient facility--A" means a--physician--  
 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--(22)--

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

11 (15)(23) "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)(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 (27)(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--society--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       ~~1071271~~ "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 4a"~~

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--et--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      et--other the minimum standards referred to in 50-5-103(1)  
 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      ~~121 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      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. 111. 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       111121 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       1111 Upon discontinuance of the operation or of

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

3 ~~§37151~~ 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(f), 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--substantiated  
 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 (i) 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, (t) -- 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       (t) -- 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.

13  
 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. (t) -- An--application

1 for--approvet--must-be-submitted-to-the-department-in-a-form  
 2 together-with-information-as-the-department--may--prescribe  
 3       {2}--the-application-shall--include  
 4       {a}--a--narrative--description-of-the-proposed-project  
 5       {b}--the-number-and-type-of-beds-and/or-services-to--be  
 6 provided  
 7       {c}--the-estimated-costs  
 8       {d}--the-source-of-funding  
 9       {e}--the--expected--time-for-completion-of-the-proposed  
 10 project--and  
 11       {f}--a-simple-line-drawing-showing-major--dimensions-of  
 12 the-proposed-project. (1) Any person intending to initiate  
 13 an activity for which a certificate of need is required  
 14 shall submit a letter of intent to the department. After  
 15 receipt, the department shall send the applicant a form  
 16 requiring the submission of information considered necessary  
 17 by the department to determine if the proposed activity  
 18 meets the standards in 50-5-304. The form and content of the  
 19 notification of intent and applications for certificates of  
 20 need shall be prescribed by rule by the department.  
 21 (2) Within 15 calendar days after receipt of the  
 22 application, the department shall determine whether it  
 23 contains sufficient information to determine if the proposed  
 24 activity meets the standards in 50-5-304. If the application  
 25 is found incomplete, the department shall request additional

1 informations.  
 2       (3) After the application has been designated  
 3 complete, notification must be sent to the applicant and all  
 4 other affected persons regarding the department's projected  
 5 review of the application and the review period time  
 6 schedule. The review period for the application may be no  
 7 longer than 90 calendar days after the notice is sent unless  
 8 a longer period is agreed to by the applicant. During the  
 9 review period a public hearing may be held if requested by  
 10 one or more affected persons.  
 11       (4) The department shall, after considering all  
 12 comments received during the review period, issue a  
 13 certificate of needs with or without conditions, or reject  
 14 the application. If the department fails to act within the  
 15 designated period and an extension has not been granted, the  
 16 failure to act constitutes disapproval of the application.  
 17 The department shall notify the applicant and affected  
 18 persons of its decision."

19       Section 14. Section 50-5-304, MCA, is amended to read:  
 20       "50-5-304. Requirements-for-approvet Review criteria,  
 21 required findings, and standards. (1) No application may be  
 22 approved unless the action proposed:  
 23       {a}--is-necessary-to-provide-required--health--care--in  
 24 the-area-to-be-served;  
 25       {b}--can--be--economically-accomplished-and-maintained;

1 end

2       to--will--contribute--to--the--orderly--development--of

3 adequate--and--effective--health--services;

4       to--in--making--the--determinations--enumerated--in

5 subsection--(f)--the--following--shall--be--considered:

6       to--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       to--the--availability--of--facilities--or--services--which

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

11       to--the--need--for--special--equipment--and--services--in--the

12 areas;

13       to--the--possible--economies--and--improvement--in--services

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

15 services--in--funding--but--not--limited--to--laboratory--research

16 radiology--pharmacy--laundry--and--purchasing;

17       to--the--adequacy--of--financial--resources--and--sources--of

18 future--revenue--and;

19       to--the--availability--of--sufficient--manpower--in--the

20 several--profession--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       (I) 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            (I) the relationship of services reviewed to the

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

6 or proposing the services;

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

8 served by the services has for the services;

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

10 alternative methods of providing such services;

11            (IV) 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            (V) 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            (VI) 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            (VII) 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--feiture--to--obtain--prior  
4 approvet Civil penalty -- injunction. Penalties-for--feiture  
5 to--obtain--prior--approvet--of--the--department--are--as--follows:  
6  
7 ~~tit~~--Any--person--who--constructs--any--new--health--care  
8 facility--as--defined--in--50-5-101--without--prior--approvet--by  
9 the--department--is--guilty--of--a--misdemeanor--and--shall--be  
10 punished--by--a--fine--of--not--less--than--\$1,000--or--more--than  
11 \$10,000--the--fine--to--be--deposited--in--the--state--general--fund--  
12 and--this--new--facility--is--not--eligible--for--a--tenure--as--a  
13 health--care--facility--as--defined--in--50-5-101.

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~~tit~~--Any--person--who--expends--represents--or--utters--on  
existing--health--care--facility--as--defined--in--50-5-101--without  
prior--written--approvet--by--the--department--is--guilty--of--a  
misdemeanor--and--shall--be--punished--by--a--fine--of--not--less--than  
\$1,000--or--more--than--\$10,000--the--fine--to--be--deposited--in--the  
state--general--fund. 111. A person who violates the terms of  
50-5-301 is subject to a civil penalty of not less than  
\$1,000 or more than \$10,000. Each day of violation  
constitutes a separate offense. The department or, upon  
request of the department, the county attorney of the county  
where the health care facility in question is located may  
petition the district court to impose, assess, and recover  
the civil penalty. Money collected as a civil penalty shall

1 be deposited in the state general fund.

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121. The department or, upon request of the department,  
the county attorney of the county where the health care  
facility in question is located may bring an action to  
enjoin a violation of 50-5-301, in addition to or exclusive  
of the remedy in subsection 111."

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

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

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

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

"50-5-404. Duties of department. The department shall:  
~~tit~~--adopt--necessary--rules--for--the--administration--of

1 this part;

2        2711 prescribe minimum standards for the maintenance  
 3 and operation of hospitals--medical--and--related health care  
 4 facilities receiving federal aid for construction under the  
 5 state plan;

6        2812 inventory existing hospital, medical, and  
 7 related health care facilities;

8        2913 survey the need for construction or alteration  
 9 of hospitals health care facilities;

10        3014 develop and administer a state plan for the  
 11 construction and alteration of public and other nonprofit  
 12 hospitals--medical--and--related health care facilities;

13        3115 if desirable, enter into agreements for the  
 14 utilization of facilities and services of other departments,  
 15 agencies, and institutions, public or private;

16        3216 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        3317 prepare and review a construction program in  
 20 accordance with federal requirements that will provide  
 21 adequate hospitals--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        29181 submit to federal agencies state plans,  
 2 including those for the hospitals--medical--and--related  
 3 health care facilities construction program and  
 4 modifications of it providing for the establishment and  
 5 operation of hospitals--medical--and--related health care  
 6 facilities construction activities in accordance with  
 7 federal requirements;

8        30191 make application to the appropriate federal  
 9 agency for funds to assist in carrying out the survey and  
 10 planning activities;

11        31101 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        32111 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        33121 require reports and make inspections and  
 22 investigations as necessary or required by the federal  
 23 agency;

24        34131 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 hospitals--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 operations 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;

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, 1979, 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.

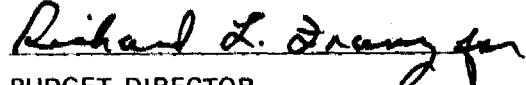
## Fiscal Impact

	FY '80	FY '81
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	55,697	55,697
	<u>74,262</u>	<u>74,262</u>

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



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/20/79

STATEMENT OF INTENT RE: SB 100

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        services, 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 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.

SB 106

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

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

22                  Section 1. Section 50-5-101, MCA, is amended to read:  
23                  "50-5-101. Definitions. As used in parts 1 through 3 of  
24                  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                  (27) "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--medicaid--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 (3)(1) "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 (4)(1) "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 (5)(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 or licensed physicians, services for medical  
 2 diagnosis, treatment, ~~rehabilitations~~ 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--diagnoses--treatments~~  
 17 ~~medicat--or--nursing-care--or--medicatly--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--mentat~~  
 21 ~~health--and--mentat--retardation--institutions--alcoholtism--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 ~~181141~~ "Infirmary" 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 ~~181151~~ an "Infirmary--A" "Infirmary--A" provides  
 6 outpatient and inpatient care;  
 7 ~~181161~~ an "Infirmary--B" "Infirmary--B" provides  
 8 outpatient care only.

9 ~~181171~~ "Kidney treatment center" means a facility which  
 10 specializes in treatment of kidney diseases, including  
 11 freestanding hemodialysis units.

12 ~~181181~~ (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--fellowst, 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--skilled-nursing-care-and  
 4    personel-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-personel-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 (22) (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 (23) (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 outpatient  
 25 QUIPALENI facility may have observation beds.

1 (24) "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 (23) "Patient" means an individual obtaining services  
 10 including skilled nursing care from a health care facility.

11 (25) (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 (26) (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 (27) (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 ~~1271~~ "Resident" means a person who is in a  
 9 long-term care facility as a patient or for intermediate or  
 10 personal care.

11 ~~1281~~ "State plan" means the state medical facility plan  
 12 provided for in part 4a"

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) Rates--relating--to--building--equipment--and--fire  
 20 and life safety shall be covered by the state building codes  
 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~~  
 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. ~~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 ~~121~~ 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. ~~III~~ 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~~ 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 ~~t2t31~~ Upon discontinuance of the operation or of  
 6 transfer of ownership of a facility, the license must be  
 7 returned to the department.

8 ~~t3t41~~ 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 52  
 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-substantial  
 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 (1) There is conversion of the property of a patient  
3 or resident without his consent.

4 (b) 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 of, 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. (ii) 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 (1) 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 (1) 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 (2) 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       is-necessary-to-provide-required--health-care-in  
 3 the-area-to-be-served  
 4       to--can--be--economically-accomplished-and-maintained  
 5 and  
 6       to--will-contribute--to--the--orderly--development--of  
 7 adequate-and-effective-health-services.  
 8       to--in--making---the---determinations--enumerated--in  
 9 subsection-12,--the-following-shall-be-considered:  
 10       to--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       to--the--availability--of--facilities--or--services--which  
 14 may--serve--as--alternates--or--substitutes  
 15       to--the--need--for--special--equipment--and--services--in--the  
 16 area  
 17       to--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       to--the--adequacy--of--financial--resources--and--sources--of  
 22 future--revenue--and  
 23       to--the--availability--of--sufficient--manpower--in--the  
 24 several--profession--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       111--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       121--the--relationship--of--services--reviewed--to--the  
 9 long--range--development--plan--if--any--of--the--person--providing  
 10 or--proposing--the--services:  
 11       131--the--need--that--the--population--served--or--to--be  
 12 served--by--the--services--has--for--the--services:  
 13       141--the--availability--of--less--costly--QUALITY--EQUIVALENT  
 14 or--more--effective--alternative--methods--of--providing--such  
 15 services:  
 16       151--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       161--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       171--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 120 months  
 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       121 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. ~~if~~--~~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       121 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       131 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 2-4-704.

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---feiture---to---obtain---prior  
 17 approval civil penalty -- in junction. Penalties for---feiture  
 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. (3) 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 hospitals--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       if--adopt--necessary--rules--for-the-administration-of

14      this-part

15       to~~to~~ prescribe minimum standards for the maintenance

16       and operation of hospitals--medical--and--related health care

17       facilities receiving federal aid for construction under the

18       state plan;

19       to~~to~~ inventory existing hospital, medical, and

20       related health care facilities;

21       to~~to~~ survey the need for construction or alteration

22       of hospitals health care facilities;

23       to~~to~~ develop and administer a state plan for the

24       construction and alteration of public and other nonprofit

25       hospitals--medical--and--related health care facilities;

1       to~~to~~ if desirable, enter into agreements for the

2       utilization of facilities and services of other departments,

3       agencies, and institutions, public or private;

4       to~~to~~ 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       to~~to~~ prepare and review a construction program in

8       accordance with federal requirements that will provide

9       adequate hospitals--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       to~~to~~ submit to federal agencies state plans,

15       including those for the hospitals--medical--and--related

16       health care facilities construction program and

17       modifications of it providing for the establishment and

18       operation of hospitals--medical--and--related health care

19       facilities construction activities in accordance with

20       federal requirements;

21       to~~to~~ make application to the appropriate federal

22       agency for funds to assist in carrying out the survey and

23       planning activities;

24       to~~to~~ 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 ~~shall~~ 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 ~~shall~~ require reports and make inspections and  
 10 investigations as necessary or required by the federal  
 11 agency;

12 ~~shall~~ 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 ~~and~~ medicat facilities and services."

20 Section 22. Section 50-5-408, MCA, is amended to read:  
 21 "50-5-408. Applications for construction projects.  
 22 Applications for ~~hospitoty-medicat-and-related health care~~  
 23 facilities construction projects may be submitted by a state  
 24 agency, a political subdivision, or by any public or

1 nonprofit agency authorized to construct and operate a  
 2 ~~hospitoty-medicat-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 ~~hospitoty-medicat~~  
 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 ~~hospitoty-medicat~~ 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 ~~hospitoty-or-medicat~~ health care facility,  
 15 ~~hospitoty-or-medicat~~ 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

STATEMENT OF INTENT RE: SB 100

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.

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

SB 100

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, certifications, 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**

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."

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 this chapter, unless the context clearly indicates

1 otherwise, the following definitions apply:

2       131 "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       132 "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 IV of the Public

13 Health Service Act.

14       133 "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 treatments.

19       1341 "Board" means the board of health and

20 environmental sciences, provided for in 2-15-2104.

21       151 "Certificate of need" means a written

22 authorization by the department for a person to proceed with

23 a proposal subject to 50-5-301a.

24       127--"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 breakings.

17 (7)(I) "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)(I) "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, 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 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-diagnostic--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--menter  
 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) "Infirmary" 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 ~~(a)~~(1) "Infirmary--A" "Infirmary--A" provides  
 6 outpatient and inpatient care;  
 7 ~~(b)~~(2) "Infirmary--B" "Infirmary--B" provides  
 8 outpatient care only.  
 9 ~~(15)~~(1) "Kidney treatment center" means a facility which  
 10 specializes in treatment of kidney diseases, including  
 11 freestanding hemodialysis units;  
 12 ~~(16)~~(2) "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-property-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)~~(1) "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        (i) "Intermediate nursing care" facilities--A--are  
 3    establishments--furnishing--limited-skilled-nursing-care-and  
 4    personnel-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        (ii) "Intermediate care" facilities--B--are  
 9    establishments--providing only personnel-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    1a) 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 (el) 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 (t+2)1201 "Observation bed" to means a bed used occupied  
 9 for not more than 6 hours by a patient recovering from  
 10 surgery or other treatment.

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

13 (t+3)1221 "Outpatient facility--A" means a--physically  
 14 separate--component-of--a--licensed--hospital--or--a--medicat  
 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 (t+4)1231 "Outpatient facility--B"--means--a--facility--operated  
 2 physically--apart--from--a--hospital--or--other--than--a--medicat  
 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--(t+2)1201

9 (123) "Patient" means an individual obtaining services  
 10 including skilled nursing care, from a health care facility;  
 11 (t+5)1241 "Person" means an any individual, firm,  
 12 partnership, association, organization, agency, institutions,  
 13 corporations, trusts, estates or governmental units, whether  
 14 organized for profit or not.

15 (t+6)1251 "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 (t+7)1261 "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--medicat

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 ~~1201~~ "Resident" means a person who is in a  
 9 long-term care facility as a patient or for intermediate or  
 10 personal care.

11 ~~1201~~ "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 buildings, equipment and fire  
 20 and life safety shall be covered by the state building codes.  
 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 ~~and~~ 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. ~~All phases of the operation of a health care~~  
~~facility shall be without discrimination against anyone on~~  
~~the basis of race, creed, religion, color, national origin,~~  
~~sex, age, marital status, physical or mental handicap, or~~  
~~political ideas.~~

19 ~~121~~ 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      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 6 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      (1) 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 ~~131~~ Upon discontinuance of the operation or of  
 6 transfer of ownership of a facility, the license must be  
 7 returned to the department.

8 ~~131~~ 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 52  
 23 W.S.C. 1395 x(ol), 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-substantiat  
 9 fature-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 (1) There is conversion of the property of a patient  
 3 or resident without his consent.

4 (1b) 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, suspensions or revocation of a health  
 9 care facility license is not subject to the certificate of  
 10 need requirements of part 3a.

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. 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 12-1. Approval may be given only if the plans and  
 11 specifications conform to the state or the metropolitan  
 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 12-1a. a new institutional health service as defined in  
 17 50-5-101;

18 12-1b. 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 approvet Application and review process. (i) An application

5 for--approvet--must--be--submitted--to--the--department--in--a--form

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

7       (f) The application shall include:

8       (f) A narrative description of the proposed project

9       (f) The number and type of beds and/or services to be

10 provided;

11       (f) The estimated cost;

12       (f) The source of financing;

13       (f) 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. (ii) 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       (i) 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       (i) 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       (ii) 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-approvet Review criteria,

25 required findings, and standards. (i) 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 end

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

7 adequate-and-effective-health-services;

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

9 subsection-(b), the-following-shall-be-considered:

10        (a) the--competitability--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-revenue;

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

24 several-professionals-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 provisions, 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 123a 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 2 years  
 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 2, 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 decisions. 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 2a  
 12 chapter 4, part 7a.

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--fatture--to--obtain--prior  
 17 approve~~s~~ Civil penalty -- injunction. Penalties--for--fatture  
 18 to--obtain--prior--approvet--of--the--department--are--as--follows:  
 19 (1) Any person who constructs--any--new--health--care  
 20 facility--as--defined--in 50-5-181--without--prior--approvet--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 50-5-181--

1 (2) Any person who expends--remodels--or--alters--an  
 2 existing--health--care--facility--as--defined--in 50-5-181--without  
 3 prior--written--approvet--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. (3) A person who violates the terms of  
 7 50-5-301 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 funds.

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 (1a).

20 NEW SECTION~~s~~ 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--medicay--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       ~~to~~--adopt--necessary--rules--for-the-administration-of

14 this-part:

15       ~~to~~111 prescribe minimum standards for the maintenance

16 and operation of hospital--medicay--and--related health care

17 facilities receiving federal aid for construction under the

18 state plan;

19       ~~to~~121 inventory existing hospital, medical, and

20 related health care facilities;

21       ~~to~~131 survey the need for construction or alteration

22 of hospital's health care facilities;

23       ~~to~~141 develop and administer a state plan for the

24 construction and alteration of public and other nonprofit

25 hospital--medicay--and--related health care facilities;

1       ~~to~~151 if desirable, enter into agreements for the

2 utilization of facilities and services of other departments,

3 agencies, and institutions, public or private;

4       ~~to~~161 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       ~~to~~171 prepare and review a construction program in

8 accordance with federal requirements that will provide

9 adequate hospital--medicay--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       ~~to~~181 submit to federal agencies state plans,

15 including those for the hospital--medicay--and--related

16 health care facilities construction program and

17 modifications of it providing for the establishment and

18 operation of hospital--medicay--and--related health care

19 facilities construction activities in accordance with

20 federal requirements;

21       ~~to~~191 make application to the appropriate federal

22 agency for funds to assist in carrying out the survey and

23 planning activities;

24       ~~to~~201 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 ~~shall~~ 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 ~~shall~~ require reports and make inspections and  
 10 investigations as necessary or required by the federal  
 11 agency;

12 ~~shall~~ 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 ~~medicai--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 ~~hospitai--medicai--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 ~~hospitai--medicai--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 ~~hospitai--medicai~~  
 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 ~~hospitai--or--medicai~~ 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 ~~hospitai--or--medicai~~ health care facility,  
 15 ~~hospitai--or--medicai~~ 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-

STATEMENT OF INTENT RE: SB 100

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

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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.

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1 otherwise, the following definitions apply:

2       111 "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       121 "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       131 "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 treatments.

19       141 "Board" means the board of health and  
20 environmental sciences, provided for in 2-15-2104.

21       151 "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       161 "Construction" means the erection, expansion,  
25 remodeling, or alteration of a new or existing facility, the

1 ~~capital--expenditure-for-which-amounts-to-450,000-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--~~  
 11 ~~exemptions--from--this--definition--must--nevertheless--be~~  
 12 ~~consistent--with--the--state--medicaid--facilities--plan--of--the~~  
 13 ~~department.~~

14 ~~161. "Construction" means the physical erection of a~~  
 15 ~~health care facility and any stage thereof, including ground~~  
 16 ~~breakings.~~

17 ~~17111 "Department" means the department of health and~~  
 18 ~~environmental sciences provided for in Title 2, chapter 15,~~  
 19 ~~part 21.~~

20 ~~181. "Federal acts" means federal statutes for the~~  
 21 ~~construction of health care facilities.~~

22 ~~19111 "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 ~~191101 "Health care facility" means a--hospitals,~~

1 ~~hospitals--related--facility--or--long--term--care--facility-- any~~  
 2 ~~institutions, buildings, 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 treatments, 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 ~~1111 "Health maintenance organization" means a public~~  
 15 ~~or private organization organized as defined in 42 U.S.C.~~  
 16 ~~300e, as amended.~~

17 ~~1121 "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 ~~16111 "Hospital" means a health-care facility~~  
 25 ~~licensed by the department to provide, 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-diagnostic--treatments,~~  
 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) (1) "Infirmary" 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 ~~(a) "Infirmary--A" "Infirmary--A" provides~~  
 6 ~~outpatient and inpatient care;~~  
 7 ~~(b) "Infirmary--B" "Infirmary--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 ~~(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-property-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     personnel-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-personnel-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        (i) the construction, development, or other  
 4     establishment of a health care facility which did not  
 5     previously exist;  
 6        (ii) 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        (i) 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        (ii) 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 (127) "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 (121) "Offer" means the holding out by a health care  
 12 facility that it can provide specific health services;

13 (137) "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 EQUIPMENT 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-(127);

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

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

15 (167) "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 (177) "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--psychotesting--society--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    ~~1271~~ "Resident" means a person who is in a  
 9    long-term care facility as a patient or for intermediate or  
 10   personal care.

11    ~~1281~~ "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 codes.  
 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 50-5-103/21~~  
 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. ~~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    ~~121~~ 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. 111. 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       111. 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 ~~shall~~ Upon discontinuance of the operation or of  
 6 transfer of ownership of a facility, the license must be  
 7 returned to the department.

8 ~~shall~~ 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, x101, 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--substantial  
 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.

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

4 191. Any provision of parts 1 through 3 is violated.

5 121. 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.

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

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:

16 111. a new institutional health service as defined in  
 17 50-5-101;  
 18 121. 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 approvet Application and review process. (1) An application  
5 for--approvet--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. (2) 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 a disapproval of the application.  
21 The department shall notify the applicant and affected  
22 persons of its decisions."

23 Section 14. Section 50-5-304, MCA, is amended to read:  
24 "50-5-304. Requirements for approvet Review criteria:  
25 required findings, and standards. (1) No application may be

1 approved-unless-the-action-proposed+  
 2        is-necessary-to-provide-required--health--care--in  
 3 the-area-to-be-served+  
 4        that--can--be--economically--accomplished-and-maintained+  
 5 and  
 6        that--will--contribute--to--the--orderly--development--of  
 7 adequate-and-effective-health-services+  
 8        that--in--making--the--determinations--enumerated--in  
 9 subsection-(i)--the--following--shall--be--considered+  
 10        that--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        that--the--availability--of--facilities--or--services--which  
 14 may--serve--as--alternates--or--substitutes+  
 15        that--the--need--for--special--equipment--and--services--in--the  
 16 area+  
 17        that--the--possible--economics--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        that--the--adequacy--of--financial--resources--and--sources--of  
 22 future--revenues+ and  
 23        that--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        (i) 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        (ii) the--relationship--of--services--reviewed--to--the  
 9 long--range--development--plan--if--any--of--the--person--providing  
 10 or--proposing--the--services;  
 11        (iii) the--need--that--the--population--served--or--to--be  
 12 served--by--the--services--has--for--the--services;  
 13        (iv) the--availability--of--less--costly--QUALITY--EQUIVALENT  
 14 or--more--effective--alternative--methods--of--providing--such  
 15 services;  
 16        (v) 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        (vi) 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        (vii) 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 relationship, 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 provisions, 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 (i) 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       121 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 2, 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 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 2-4-704.

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--faffure--to--obtain--prior  
 17 approvel civil penalty -- injunction. Penalties-for--faffure  
 18 to--obtain--prior--approvel--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--approvel--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--approvel--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. (3) A person who violates the terms of  
 7 50-5-301 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 (1a).

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 hospitals--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 plans"

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

12       "50-5-404. Duties of department. The department shall:

13       ~~to--adopt--necessary--rules--for--the--administration--of~~

14 ~~this--part~~

15       ~~to--will~~ prescribe minimum standards for the maintenance

16 and operation of hospitals--medical--and--related health care

17 facilities receiving federal aid for construction under the

18 state plan;

19       ~~to--will~~ inventory existing hospital, medical, and

20 related health care facilities;

21       ~~to--will~~ survey the need for construction or alteration

22 of hospitals health care facilities;

23       ~~to--will~~ develop and administer a state plan for the

24 construction and alteration of public and other nonprofit

25 hospitals--medical--and--related health care facilities;

1       ~~to--will~~ if desirable, enter into agreements for the

2 utilization of facilities and services of other departments,

3 agencies, and institutions, public or private;

4       ~~to--will~~ 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       ~~to--will~~ prepare and review a construction program in

8 accordance with federal requirements that will provide

9 adequate hospitals--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       ~~to--will~~ submit to federal agencies state plans,

15 including those for the hospitals--medical--and--related

16 health care facilities construction program and

17 modifications of it providing for the establishment and

18 operation of hospitals--medical--and--related health care

19 facilities construction activities in accordance with

20 federal requirements;

21       ~~to--will~~ make application to the appropriate federal

22 agency for funds to assist in carrying out the survey and

23 planning activities;

24       ~~to--will~~ 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 ~~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 ~~require reports and make inspections and~~  
 10 investigations as necessary or required by the federal  
 11 agency;

12 ~~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 ~~medicet-and-retated~~  
 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 ~~hospitete-medicet-and-retated 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 ~~hospitete-medicet-or-retated 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 ~~hospitete-medicet~~  
 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 ~~hospitete-or-medicet~~ 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 ~~hospitete-or-medicet~~ health care facility,  
 15 ~~hospitete-or-medicet~~ 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-