

House Bill 458

In The House

January 24, 1981

Introduced and referred  
to Committee on Human  
Services.

February 18, 1981

Committee recommend bill  
do not pass.

1                    HOUSE    BILL NO. 458  
 2    INTRODUCED BY VINOGRAD                    Stuber    Solis  
 3  
 4    A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL THE MONTANA  
 5    CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE FACILITIES;  
 6    AMENDING SECTIONS 50-5-101, 50-5-106, AND 50-5-207, MCA;  
 7    REPEALING SECTIONS 50-5-301 THROUGH 50-5-308, MCA."

8  
 9    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10            Section 1. Section 50-5-101, MCA, is amended to read:  
 11            "50-5-101. Definitions. As used in parts 1 through 4  
 12    of this chapter, unless the context clearly indicates  
 13    otherwise, the following definitions apply:

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

18            ~~(2) "Affected persons" means the applicants, members of~~  
 19    ~~the public who are to be served by the proposed health care~~  
 20    ~~facilities located in the geographic area affected by the~~  
 21    ~~applicant, agencies which establish rates for health care~~  
 22    ~~facilities, and agencies which plan or assist in planning~~  
 23    ~~for such facilities, including any agency qualifying as a~~  
 24    ~~health systems agency pursuant to Title XV of the Public~~  
 25    ~~Health Service Act.~~

1            ~~(3)(2)~~ "Ambulatory surgical facility" means a  
 2    facility, not part of a hospital, which provides surgical  
 3    treatment to patients not requiring hospitalization. This  
 4    type of facility may include observation beds for patient  
 5    recovery from surgery or other treatment.

6            ~~(4)(2)~~ "Board" means the board of health and  
 7    environmental sciences, provided for in 2-15-2104.

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

11            ~~(6)(4)~~ "Construction" means the physical erection of a  
 12    health care facility and any stage thereof, including ground  
 13    breaking.

14            ~~(7)(5)~~ "Department" means the department of health and  
 15    environmental sciences provided for in Title 2, chapter 15,  
 16    part 21.

17            ~~(8)(6)~~ "Federal acts" means federal statutes for the  
 18    construction of health care facilities.

19            ~~(9)(7)~~ "Governmental unit" means the state, a state  
 20    agency, a county, municipality, or political subdivision of  
 21    the state, or an agency of a political subdivision.

22            ~~(10)(8)~~ "Health care facility" means any institution,  
 23    building, or agency or portion thereof, private or public,  
 24    excluding federal facilities, whether organized for profit  
 25    or not, used, operated, or designed to provide health

1 services, medical treatment, or nursing, rehabilitative, or  
 2 preventive care to any person or persons. The term does not  
 3 include offices of private physicians or dentists. The term  
 4 includes but is not limited to ambulatory surgical  
 5 facilities, health maintenance organizations, home health  
 6 agencies, hospitals, infirmaries, kidney treatment centers,  
 7 long-term care facilities, mental health centers, outpatient  
 8 facilities, public health centers, rehabilitation  
 9 facilities, and adult day-care centers.

10 ~~(12)~~(9) "Health maintenance organization" means a  
 11 public or private organization organized as defined in 42  
 12 U.S.C. 300e, as amended.

13 ~~(13)~~(10) "Home health agency" means a public agency or  
 14 private organization or subdivision thereof which is engaged  
 15 in providing home health services to individuals in the  
 16 places where they live. Home health services must include  
 17 the services of a licensed registered nurse and at least one  
 18 other therapeutic service and may include additional support  
 19 services.

20 ~~(14)~~(11) "Hospital" means a facility providing, by or  
 21 under the supervision of licensed physicians, services for  
 22 medical diagnosis, treatment, rehabilitation, and care of  
 23 injured, disabled, or sick persons. Services provided may or  
 24 may not include obstetrical care, emergency care, or any  
 25 other service as allowed by state licensing authority. A

1 hospital has an organized medical staff which is on call and  
 2 available within 20 minutes, 24 hours per day, 7 days per  
 3 week, and provides 24-hour nursing care by licensed  
 4 registered nurses. This term includes hospitals specializing  
 5 in providing health services for psychiatric, mentally  
 6 retarded, and tubercular patients.

7 ~~(15)~~(12) "Infirmery" means a facility located in a  
 8 university, college, government institution, or industry for  
 9 the treatment of the sick or injured, with the following  
 10 subdefinitions:

11 (a) an "infirmery--A" provides outpatient and  
 12 inpatient care;

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

14 ~~(16)~~(13) "Kidney treatment center" means a facility  
 15 which specializes in treatment of kidney diseases, including  
 16 freestanding hemodialysis units.

17 ~~(17)~~(14) (a) "Long-term care facility" means a facility  
 18 or part thereof which provides skilled nursing care or  
 19 intermediate nursing care to a total of two or more persons  
 20 or personal care to more than three persons who are not  
 21 related to the owner or administrator by blood or marriage,  
 22 with these degrees of care defined as follows:

23 (i) "Skilled nursing care" means the provision of  
 24 nursing care services, health-related services, and social  
 25 services under the supervision of a licensed registered

1 nurse on a 24-hour basis.

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

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

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

14 ~~(17)~~(15) "Mental health center" means a facility  
15 providing services for the prevention or diagnosis of mental  
16 illness, the care and treatment of mentally ill patients or  
17 the rehabilitation of such persons, or any combination of  
18 these services.

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

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

23 ~~(b)~~--any--expenditure--by--or--on--behalf--of--a--health--care  
24 facility--within--a--12-month-period--in--excess--of--\$150,000,  
25 which--under--generally--accepted--accounting--principles

1 consistently--applied--is--a--capital--expenditure--Whenever--a  
2 health--care--facility--or--a--person--on--behalf--of--a--health--care  
3 facility--makes--an--acquisition--under--lease--or--comparable  
4 arrangement--or--through--donation--which--would--have--required  
5 review--if--the--acquisition--had--been--by--purchase--such  
6 acquisition--shall--be--considered--a--capital--expenditure  
7 subject--to--reviews

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

14 ~~(d)~~--health--services--which--are--offered--in--or--through--a  
15 health--care--facility--and--which--were--not--offered--on--a--regular  
16 basis--in--or--through--such--health--care--facility--within--the  
17 12-month-period--prior--to--the--time--such--services--would--be  
18 offered--or--the--discontinuation--by--a--health--care--facility--of--a  
19 service--previously--offered;

20 ~~(e)~~--the--expansion--of--a--geographic--service--area--of--a  
21 home--health--agency;

22 ~~(19)~~(16) "Nonprofit health care facility" means a  
23 health care facility owned or operated by one or more  
24 nonprofit corporations or associations.

25 ~~(20)~~(17) "Observation bed" means a bed occupied for not

1 more than 6 hours by a patient recovering from surgery or  
2 other treatment.

3 ~~(21)(18)~~ "Offer" means the holding out by a health care  
4 facility that it can provide specific health services.

5 ~~(22)(19)~~ "Outpatient facility" means a facility,  
6 located in or apart from a hospital, providing, under the  
7 direction of a licensed physician, either diagnosis or  
8 treatment, or both, to ambulatory patients in need of  
9 medical, surgical, or mental care. An outpatient facility  
10 may have observation beds.

11 ~~(23)(20)~~ "Patient" means an individual obtaining  
12 services, including skilled nursing care, from a health care  
13 facility.

14 ~~(24)(21)~~ "Person" means any individual, firm,  
15 partnership, association, organization, agency, institution,  
16 corporation, trust, estate, or governmental unit, whether  
17 organized for profit or not.

18 ~~(25)(22)~~ "Public health center" means a publicly owned  
19 facility providing health services, including laboratories,  
20 clinics, and administrative offices.

21 ~~(26)(23)~~ "Rehabilitation facility" means a facility  
22 which is operated for the primary purpose of assisting in  
23 the rehabilitation of disabled persons by providing  
24 comprehensive medical evaluations and services,  
25 psychological and social services, or vocational evaluation

1 and training or any combination of these services and in  
2 which the major portion of the services is furnished within  
3 the facility.

4 ~~(27)(24)~~ "Resident" means a person who is in a  
5 long-term care facility for intermediate or personal care.

6 ~~(28)(25)~~ "State plan" means the state medical facility  
7 plan provided for in part 4."

8 Section 2. Section 50-5-106, MCA, is amended to read:

9 "50-5-106. Records and reports required of health care  
10 facilities -- confidentiality. Health care facilities shall  
11 keep records and make reports as required by the department.  
12 Before February 1 of each year, every licensed health care  
13 facility shall submit an annual report for the preceding  
14 calendar year to the department. The report shall be on  
15 forms and contain information specified by the department.  
16 Information received by the department or board through  
17 reports, inspections, or provisions of parts 1 and 2 may not  
18 be disclosed in a way which would identify patients. A  
19 department employee who discloses information which would  
20 identify a patient shall be dismissed from employment and  
21 subject to the provision of 45-7-401, unless the disclosure  
22 was authorized in writing by the patient, his guardian, or  
23 his agent. Information and statistical reports from health  
24 care facilities which are considered necessary by the  
25 department for health planning and resource development

1 activities will be made available to the public and the  
 2 health planning agencies within the state. ~~Applications by~~  
 3 ~~health care facilities for certificates of need and any~~  
 4 ~~information relevant to review of these applications~~  
 5 ~~pursuant to part 3, shall be accessible to the public."~~

6 Section 3. Section 50-5-207, MCA, is amended to read:  
 7 "50-5-207. Denial, suspension, or revocation of health  
 8 care facility license -- provisional license. (1) The  
 9 department may deny, suspend, or revoke a health care  
 10 facility license if any of the following circumstances  
 11 exist:

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

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

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

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

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

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

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

5 (h) Any provision of parts 1 through ~~3~~ and 2 is  
 6 violated.

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

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

13 Section 4. Repealer. Sections 50-5-301 through  
 14 50-5-308 are repealed.

-End-