

House Bill 513

In The House

January 27, 1981

Introduced and referred
to Committee on Human Services.

February 18, 1981

Committee recommend bill
do not pass.

1 Haugen BILL NO. 513
2 INTRODUCED BY Menahan

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

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
7 CLARIFY THE LAWS RELATING TO LICENSING AND CERTIFICATES OF
8 NEED OF HEALTH CARE FACILITIES; PROVIDING FOR
9 CONFIDENTIALITY OF COMPLAINTS; AUTHORIZING RECEIVERS TO BE
10 APPOINTED FOR LONG-TERM CARE FACILITIES; AMENDING SECTIONS
11 50-5-101, 50-5-201, 50-5-203, 50-5-204, 50-5-208, 50-5-301,
12 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 50-5-101, MCA, is amended to read:
16 "50-5-101. Definitions. As used in parts 1 through 4
17 of this chapter, unless the context clearly indicates
18 otherwise, the following definitions apply:

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

23 (2) "Affected persons" means ~~includes~~ the applicant;
24 ~~members-of-the-public-who-are-to-be-served-by-the-proposal;~~
25 ~~health-care-facilities-located-in-the-geographic-area~~

1 ~~affected-by-the-application-agencies-which-establish-rates~~
2 ~~for-health-care-facilities--and--agencies--which-plan-or~~
3 ~~assist-in-planning-for-such-facilities,-including-any-agency~~
4 ~~qualifying-as-a-health-systems-agency-pursuant-to--Title--XV~~
5 ~~of--the--Public-Health-Service-Act~~ the health systems agency
6 ~~for the service area in which a project described in~~
7 ~~50-5-301 is proposed to be located; health systems agencies~~
8 ~~servng contiguous health service areas; any person residing~~
9 ~~within the geographic area served or to be served by the~~
10 ~~applicant; any person who regularly uses health care~~
11 ~~facilities and health maintenance organizations located in~~
12 ~~the health service area in which the project is proposed to~~
13 ~~be located that provide services similar to the services of~~
14 ~~the facility under review; health care facilities and health~~
15 ~~maintenance organizations which, prior to receipt by the~~
16 ~~department of the proposal being reviewed, have formally~~
17 ~~indicated an intention to provide similar services in the~~
18 ~~future; third party payers who reimburse health care~~
19 ~~facilities for services in the health service area in which~~
20 ~~the project is proposed to be located; and any agency which~~
21 ~~establishes rates for health care facilities or health~~
22 ~~maintenance organizations located in the health service area~~
23 ~~in which the project is proposed to be located.~~

24 (3) "Ambulatory surgical facility" means a facility,
25 not part of a hospital, which provides surgical treatment to

1 patients not requiring hospitalization. This type of
2 facility may include observation beds for patient recovery
3 from surgery or other treatment.

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

6 ~~(5) "Capital expenditure" means an expenditure made by~~
7 ~~or on behalf of a health care facility that, under generally~~
8 ~~accepted accounting principles, is not properly chargeable~~
9 ~~as an expense of operation and maintenance.~~

10 ~~(5)(6)~~ "Certificate of need" means a written
11 authorization by the department for a person to proceed with
12 a proposal subject to 50-5-301.

13 ~~(7) "CFR" means the Code of Federal Regulations~~
14 ~~published by the U.S. Government Printing Office,~~
15 ~~Washington, D.C.~~

16 ~~(6)(8)~~ "Construction" means the physical erection of a
17 health care facility and any stage thereof, including ground
18 ~~breaking or the remodeling or renovation of an existing~~
19 ~~health care facility.~~

20 ~~(7)(9)~~ "Department" means the department of health and
21 environmental sciences provided for in Title 2, chapter 15,
22 part 21.

23 ~~(8)(10)~~ "Federal acts" means federal statutes for the
24 construction of health care facilities.

25 ~~(9)(11)~~ "Governmental unit" means the state, a state

1 agency, a county, municipality, or political subdivision of
2 the state, or an agency of a political subdivision.

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

16 ~~(11)(13)~~ "Health maintenance organization" means a
17 public or private organization organized as defined in 42
18 U.S.C. 300e, as amended.

19 ~~(14) "Health services" means clinically related~~
20 ~~services, which are diagnostic, treatment, or rehabilitative~~
21 ~~and includes alcohol, drug abuse, and mental health~~
22 ~~services.~~

23 ~~(15) "Health systems agency" means an entity that is~~
24 ~~organized and operated in the manner described in 42 U.S.C.~~
25 ~~3001-2 and that is capable, as determined by the secretary~~

1 of the United States department of health and human
 2 services, of performing each of the functions described in
 3 42 U.S.C. 3001-2.

4 ~~(12)~~(16) "Home health agency" means a public agency or
 5 private organization or subdivision thereof which is engaged
 6 in providing home health services to individuals in the
 7 places where they live. Home health services must include
 8 the services of a licensed registered nurse and at least one
 9 other therapeutic service and may include additional support
 10 services.

11 ~~(13)~~(17) "Hospital" means a facility providing, by or
 12 under the supervision of licensed physicians, services for
 13 medical diagnosis, treatment, rehabilitation, and care of
 14 injured, disabled, or sick persons. Services provided may or
 15 may not include obstetrical care, emergency care, or any
 16 other service as allowed by state licensing authority. A
 17 hospital has an organized medical staff which is on call and
 18 available within 20 minutes, 24 hours per day, 7 days per
 19 week, and provides 24-hour nursing care by licensed
 20 registered nurses. This term includes hospitals specializing
 21 in providing health services for psychiatric, mentally
 22 retarded, and tubercular patients.

23 ~~(14)~~(18) "Infirmiry" means a facility located in a
 24 university, college, government institution, or industry for
 25 the treatment of the sick or injured, with the following

1 subdefinitions:

2 (a) an "infirmiry--A" provides outpatient and
 3 inpatient care;

4 (b) an "infirmiry--B" provides outpatient care only.
 5 ~~(15)~~(19) "Kidney treatment center" means a facility
 6 which specializes in treatment of kidney diseases, including
 7 freestanding hemodialysis units.

8 ~~(16)~~(20) (a) "Long-term care facility" means a facility
 9 or part thereof which provides skilled nursing care, or
 10 intermediate nursing care, or intermediate mental
 11 retardation care to a total of two or more persons or
 12 personal care to more than three persons who are not related
 13 to the owner or administrator by blood or marriage, with
 14 these degrees of care defined as follows: The term does not
 15 include hotels, motels, boardinghouses, roominghouses, or
 16 similar accommodations providing for transients, students,
 17 or persons not requiring institutional health care.

18 ~~(17)~~(b) "Skilled nursing care" means the provision of
 19 nursing-care services, health-related services, and social
 20 services under the supervision of a licensed registered
 21 nurse on a 24-hour basis furnished pursuant to physician
 22 order which require the skills of technical or professional
 23 personnel 24 hours a day and which are provided either
 24 directly by or under the supervision of such personnel.

25 ~~(18)~~(c) "Intermediate nursing care" means the

1 provision of nursing care services, health-related services,
2 and social services under the supervision of a licensed
3 nurse to--patients--not-requiring on a 24-hour nursing-care
4 basis.

5 ~~(d)~~ "Intermediate mental retardation care" means the
6 provision of nursing care services, health-related services,
7 and social services for the mentally retarded or persons
8 with related problems as may be defined by rules adopted by
9 the department.

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

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

18 (21) "Major medical equipment" means a single unit of
19 medical equipment or a single system of components with
20 related functions which is used to provide medical and other
21 health services and which costs more than \$150,000. This
22 term does not include medical equipment acquired by or on
23 behalf of a clinical laboratory to provide clinical
24 laboratory services if the clinical laboratory is
25 independent of a physician's office and a hospital and has

1 been determined under Title XVIII of the Social Security Act
2 to meet the requirements of paragraphs (10) and (11) of
3 Section 1861(s) of the act. In determining whether medical
4 equipment costs more than \$150,000, the cost of studies,
5 surveys, designs, plans, working drawings, specifications,
6 and other activities essential to acquiring the equipment
7 shall be included. If the equipment is acquired for less
8 than fair market value, the term "cost" includes the fair
9 market value.

10 ~~(17)~~ (22) "Mental health center" means a facility
11 providing services for the prevention or diagnosis of mental
12 illness, the care and treatment of mentally ill patients or
13 the rehabilitation of such persons, or any combination of
14 these services.

15 ~~(18)~~ "New institutional health services" means:
16 (a) the construction, development, or other
17 establishment of a health care facility which did not
18 previously exist;

19 (b) any expenditure by or on behalf of a health care
20 facility within a 12-month period in excess of \$150,000,
21 which, under generally accepted accounting principles
22 consistently applied, is a capital expenditure, whenever a
23 health care facility or a person on behalf of a health care
24 facility makes an acquisition under lease or comparable
25 arrangement or through donation, which would have required

1 review if the acquisition had been by purchase, such
 2 acquisition shall be considered a capital expenditure
 3 subject to review.

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

10 (d) health services which are offered in or through a
 11 health care facility and which were not offered on a regular
 12 basis in or through such health care facility within the
 13 12-month period prior to the time such services would be
 14 offered or the deletion by a health care facility of a
 15 service previously offered;

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

18 (19)(23) "Nonprofit health care facility" means a
 19 health care facility owned or operated by one or more
 20 nonprofit corporations or associations.

21 (20)(24) "Observation bed" means a bed occupied for not
 22 more than 6 hours by a patient recovering from surgery or
 23 other treatment.

24 (21)(25) "Offer" means the holding out by a health care
 25 facility that it can provide specific health services.

1 (22)(26) "Outpatient facility" means a facility,
 2 located in or apart from a hospital, providing, under the
 3 direction of a licensed physician, either diagnosis or
 4 treatment, or both, to ambulatory patients in need of
 5 medical, surgical, or mental care. An outpatient facility
 6 may have observation beds.

7 (23)(27) "Patient" means an individual obtaining
 8 services, including skilled nursing care, from a health care
 9 facility.

10 (24)(28) "Person" means any individual, firm,
 11 partnership, association, organization, agency, institution,
 12 corporation, trust, estate, or governmental unit, whether
 13 organized for profit or not.

14 (25)(29) "Public health center" means a publicly owned
 15 facility providing health services, including laboratories,
 16 clinics, and administrative offices.

17 (26)(30) "Rehabilitation facility" means a facility
 18 which is operated for the primary purpose of assisting in
 19 the rehabilitation of disabled persons by providing
 20 comprehensive medical evaluations and services,
 21 psychological and social services, or vocational evaluation
 22 and training or any combination of these services and in
 23 which the major portion of the services is furnished within
 24 the facility.

25 (27)(31) "Resident" means a person who is in a

1 long-term care facility for intermediate, intermediate
2 mental retardation, or personal care.

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

5 (32) "Transfer trauma" means the physical, psychic, or
6 emotional shock that a patient or resident in a long-term
7 care facility may suffer as a result of an unexpected move
8 to another facility.

9 (33) "U.S.C." means the United States Code."

10 NEW SECTION. Section 2. Confidential information. (1)
11 A written complaint or charge made to the department
12 alleging a violation of parts 1 through 4 of this chapter or
13 a rule adopted under it against a health care facility
14 licensee or applicant shall be kept confidential until the
15 department has taken formal action pursuant to 50-5-207,
16 50-5-221, or 50-5-307.

17 (2) Subsection (1) does not prohibit the department
18 from sharing confidential information it possesses alleging
19 violations of health care laws and rules with agencies
20 charged under state or federal law with the administration
21 of health care laws and rules.

22 Section 3. Section 50-5-201, MCA, is amended to read:
23 "50-5-201. License requirements. (1) A licensee who
24 contemplates construction of or alteration or addition to a
25 health care facility shall submit plans and specifications

1 to the department for ~~preliminary inspection and approval~~
2 ~~prior to commencing construction that must be approved by~~
3 ~~the department in writing prior to the licensee's commencing~~
4 ~~the construction, alteration, or addition.~~

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

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

14 (3) A health care facility must surrender its license
15 to the department within 10 days after:

16 (a) discontinuance of the facility's operation; or
17 (b) the transfer of the facility's ownership or
18 controlling interest, or a change in its lessees.

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

21 Section 4. Section 50-5-203, MCA, is amended to read:
22 "50-5-203. Application for license. The procedure to
23 apply for a license is as follows:

24 (1) At least 30 days prior to the ~~opening~~ commencing
25 operation of a facility and annually thereafter, a person

1 ~~shall submit an~~ application ~~is made~~ to the department
2 accompanied by the license fee.

3 (2) The application ~~shall~~ **must** contain:

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

8 (b) the location of the facility;

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

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

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

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

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

19 "50-5-204. Issuance and renewal of licenses. (1) On
20 receipt of a new or renewal application, the department or
21 its authorized agent shall inspect the facility. If minimum
22 standards are met and the proposed staff is qualified, the
23 department shall issue a license for 1 year. If minimum
24 standards are not met, the department may issue a
25 provisional license with conditions for continued operation

1 for ~~less than a period not to exceed~~ 1 year if operation
2 will not result in undue hazard to patients or residents or
3 if the demand for accommodations offered is not met in the
4 community. The minimum standards which home health agencies
5 must meet in order to be licensed shall be as outlined in 42
6 U.S.C. 1395 x(o), as amended, and in rules implementing it
7 which add minimum standards.

8 (2) Licensed premises shall be open to inspection, and
9 access to all records shall be granted to the department at
10 all reasonable times."

11 Section 6. Section 50-5-208, MCA, is amended to read:

12 "50-5-208. Hearing required. ~~(1) A license may not be~~
13 ~~denied, suspended, or revoked without notice and an~~
14 ~~opportunity for a hearing before the board.~~

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

18 (1) A decision of the department to deny, suspend,
19 revoke, or reduce to provisional status a health care
20 facility license is final unless, within 30 days after
21 notice of the department's decision is given, the applicant
22 or licensee files an appeal to the board.

23 (2) If a decision of the department is appealed to the
24 board pursuant to this section, a hearing must be held
25 pursuant to the contested case provisions of the Montana

1 Administrative Procedure Act.

2 (3) The decision of the board is final 30 days after
3 ~~notice of it is mailed or served given~~ unless the applicant,
4 ~~or licensee, or department commences files~~ an action appeal
5 in the district court ~~to appeal the decision. An Such an~~
6 appeal shall be in the district court where the facility is
7 located or will be located.

8 ~~(4) Service for purposes of this chapter may be made~~
9 ~~by certified mail."~~

10 NEW SECTION. Section 7. Receivership. (1) The
11 department or the licensee or owner of a long-term care
12 facility or, with the approval of the owner, the lessee of
13 such facility may apply to the district court for the
14 appointment of a receiver to operate the long-term care
15 facility when:

16 (a) the department has refused to issue a new license
17 or to renew a license or has revoked the license of such
18 facility; or

19 (b) the department has taken summary action to suspend
20 the license of any such facility in accordance with the
21 provisions of 2-4-631(3).

22 (2) Application for the appointment of a receiver
23 pursuant to this section must be made to the district court
24 for the county where the long-term care facility is located.
25 No hearing on such application may be held sooner than 72

1 hours after the licensee of such facility has been served
2 with notice thereof, as provided in the Montana Rules of
3 Civil Procedure; however, when the department exercises its
4 summary powers, an emergency receiver may be appointed upon
5 agreement in writing between the department and licensee,
6 with the approval of the owner, until a hearing for
7 appointment of a receiver is held as provided in this
8 section. Notice shall also be served upon any owner and any
9 lessee of the long-term care facility and any holder of a
10 security interest of record in said facility. An application
11 for appointment of a receiver pursuant to this section has
12 priority over any civil or criminal case pending in the
13 district court wherein the application is filed.

14 (3) For the purpose of this section, the action of the
15 department exercised pursuant to subsection (1) of this
16 section becomes effective upon appointment of the receiver
17 of the court.

18 (4) Prior to ordering the appointment of a receiver
19 for the operation of a long-term care facility, the district
20 court must find:

21 (a) that grounds for the appointment of a receiver
22 exist as provided in subsection (1);

23 (b) that proper notice as required by subsection (2)
24 has been served; and

25 (c) that there is a necessity to continue care on a

1 temporary basis at the facility to avoid potential transfer
2 trauma in order to serve the best interests of the residents
3 of the facility pending arrangements for the lease, sale, or
4 closure of the facility.

5 (5) The department may grant the receiver a license
6 pursuant to 50-5-204, and the department of social and
7 rehabilitation services shall reimburse the receiver for the
8 long-term care facility's medicaid residents pursuant to
9 53-2-201(1)(a) and Title 53, chapter 6.

10 (6) The appointment of the receiver shall be in
11 accordance with and governed by the provisions of Rule 66 of
12 the Montana Rules of Civil Procedure. The court may enter an
13 order of appointment and fix the fees and expenses of the
14 receiver. The receiver must be a licensed nursing home
15 administrator and must post a bond with adequate sureties as
16 determined by the court, and the receiver may be sued upon
17 the bond in the name of the state of Montana at the instance
18 and for the use of any party injured. The receiver shall
19 perform duties, assume responsibilities, and preserve the
20 long-term care facility property in accordance with
21 established principles of law for receivers of real
22 property. Such duties and responsibilities shall be
23 determined by the court following a hearing, at which time
24 the parties may appear and be heard. The court shall specify
25 the duties and responsibilities of the receiver in the order

1 of appointment. No security interest in any real or personal
2 property comprising the facility or contained within the
3 facility or any fixture of the facility may be impaired or
4 diminished by the receiver, but the receiver shall comply
5 with the rules of the department in providing health care to
6 patients.

7 (7) Nothing in this section prevents the court from
8 altering or amending the terms and conditions of the
9 receivership or the receiver's responsibilities and duties
10 following a hearing, at which time the parties may appear
11 and be heard. Nothing in this section prohibits the parties
12 from stipulating to the terms and conditions of the
13 receivership and the responsibilities and duties of the
14 receiver, including the duration thereof, and such
15 stipulation shall be submitted to the court for approval.

16 (8) A receivership established pursuant to this
17 section may be terminated by the court upon application
18 therefor by the licensee of a long-term care facility, the
19 department, or the receiver. The receivership may be
20 terminated upon a finding by the court that the receivership
21 is no longer necessary, but in no case may the receivership
22 continue for longer than 180 days from the date of the
23 initial appointment of the receiver unless extended by
24 written agreement of the parties as provided in subsection
25 (7) of this section.

1 (9) Upon termination of the receivership, the court
2 shall order a final accounting and finally fix the fees and
3 expenses of the receiver following a hearing, at which time
4 the parties may appear and be heard.

5 Section B. Section 50-5-301, MCA, is amended to read:
6 "50-5-301. When ~~certificate of need~~ application is
7 required. Unless ~~a person has submitted~~ an application has
8 ~~for and is the holder of been submitted to and~~ a certificate
9 of need granted by the department, no ~~be~~ person may not
10 undertake ~~initiate~~ any of the following projects:

11 ~~(i) a new institutional health service as defined in~~
12 ~~50-5-101~~ (i) (a) the incurring of an obligation by or on
13 behalf of a health care facility for any capital
14 expenditure, other than to acquire an existing health care
15 facility, that exceeds \$150,000. The cost of any studies,
16 surveys, designs, plans, working drawings, specifications,
17 and other activities (including staff effort and consulting
18 and other services) essential to the acquisition,
19 improvement, expansion, or replacement of any plant or
20 equipment with respect to which an expenditure is made shall
21 be included in determining if the expenditure exceeds
22 \$150,000.

23 (b) the incurring of an obligation for any capital
24 expenditure by or on behalf of a health care facility that
25 changes the bed capacity of a health care facility by 10

1 beds or 10%, whichever is less, in any 2-year period,
2 through:

3 (i) increases or decreases in the total number of
4 beds;

5 (ii) redistributions of beds among various categories;

6 or

7 (iii) relocations of beds from one physical facility or
8 site to another;

9 (c) the incurring of an obligation for any capital
10 expenditure by or on behalf of a health care facility that
11 is associated with the addition of a health service which
12 was not offered by or on behalf of the facility within the
13 previous 12 months or the termination of a health service
14 which was offered in or through the facility;

15 (d) the addition of a health service that is offered
16 by or on behalf of the health care facility which was not
17 offered by or on behalf of the facility within the 12-month
18 period before the month in which the service would be
19 offered and which entails annual operating costs of at least
20 \$75,000;

21 (e) the acquisition by any person of major medical
22 equipment that will be owned by or located in a health care
23 facility;

24 (f) the acquisition by any person of major medical
25 equipment not owned by or located in a health care facility

1 if:

2 (i) the person has failed to submit the notice of

3 intent required by 50-5-302(2); or

4 (ii) the department finds, within 30 days after it

5 receives the notice of intent required by 50-5-302(2), that

6 the equipment will be used to provide services for

7 inpatients of a hospital; or

8 (g) the incurring of an obligation for a capital

9 expenditure by any person to acquire an existing health care

10 facility if:

11 (i) the person has failed to submit the notice of

12 intent required by 50-5-302(3); or

13 (ii) the department finds within 30 days after it

14 receives the notice of intent required by 50-5-302(3) that

15 the services or bed capacity of the facility will be changed

16 in being acquired.

17 ~~(2) any expenditure by or on behalf of a health care~~

18 ~~facility in excess of \$150,000 made in preparation for the~~

19 ~~offering or development of a new institutional health~~

20 ~~service and any arrangement or commitment made for financing~~

21 ~~the offering or development of the new institutional health~~

22 ~~service. Expenditures made in the preparation for the~~

23 ~~offering of a new institutional health service shall include~~

24 ~~expenditures for architectural designs, preliminary plans,~~

25 ~~working drawings, specifications, studies, and surveys.~~

1 (2) For purposes of this section:

2 (a) an obligation for a capital expenditure is

3 considered to be incurred:

4 (i) when an enforceable contract is entered into by or

5 on behalf of a health care facility for the construction,

6 acquisition, lease, or financing of a capital asset;

7 (ii) when the governing board of a health care facility

8 takes formal action to commit its own funds for a

9 construction project undertaken by the health care facility

10 as its own contractor; or

11 (iii) in the case of donated property, on the date on

12 which the gift is completed under Montana law;

13 (b) a certificate of need is required for an

14 acquisition by donation, lease, transfer, or comparable

15 arrangement if the acquisition would be subject to

16 certificate of need review under subsection (1) if made by

17 purchase;

18 (c) a certificate of need is required for an

19 acquisition for less than fair market value if the

20 acquisition at fair market value would be subject to review

21 under subsection (1);

22 (d) a health maintenance organization is to be

23 considered a health care facility except to the extent

24 exempted from certificate of need requirements as prescribed

25 in rules adopted by the department;

1 (e) the acquisition of major medical equipment does
 2 not require a certificate of need if it will be used to
 3 provide services to inpatients of hospitals only on a
 4 temporary basis in the case of a natural disaster, a major
 5 accident, or equipment failure.

6 (3) A proposed change in a project associated with a
 7 capital expenditure under subsections (1)(a), (1)(b), or
 8 (1)(c), for which the department has previously issued a
 9 certificate of need, requires subsequent certificate of need
 10 review if the change is proposed within 1 year after the
 11 date the activity for which the capital expenditure was
 12 granted a certificate of need is undertaken. As used in this
 13 subsection, a "change in project" includes but is not
 14 limited to any change in the bed capacity of a health care
 15 facility as described in subsection (1)(b) and the addition
 16 or termination of a health service.

17 (4) If a person acquires major medical equipment not
 18 located in a health care facility without a certificate of
 19 need and proposes at any time to use that equipment to serve
 20 inpatients of a hospital, the proposed new use requires a
 21 certificate of need unless the service is confined to the
 22 circumstances specified in subsection (1)(f).

23 (5) If a person acquires an existing health care
 24 facility without a certificate of need and proposes to
 25 change, within 1 year after the acquisition, the services or

1 bed capacity of the health care facility, the proposed
 2 change shall require a certificate of need if one would have
 3 been required originally under subsection (1)(g)."

4 Section 9. Section 50-5-302, MCA, is amended to read:

5 "50-5-302. Application-and-review--process Notice of
 6 intent -- application and review process. (1) The department
 7 may adopt rules including but not limited to those for:

8 (a) the forms and content of notices of intent and
 9 applications;

10 (b) the scheduling of reviews of similar proposals;

11 (c) the abbreviated review of a proposal that:

12 (i) does not significantly affect the cost or
 13 utilization of health care;

14 (ii) is necessary to eliminate or prevent imminent
 15 safety hazards; or

16 (iii) is to comply with licensure or certification
 17 standards; and

18 (d) the format of public informational hearings.

19 (2) At least 30 days before any person enters into a
 20 contract to acquire major medical equipment which will not
 21 be owned by or located in a health care facility, the person
 22 shall submit to the department and the appropriate health
 23 systems agency a notice of his intent to acquire the
 24 equipment and of the use that will be made of the equipment.

25 (3) At least 30 days before any person acquires or

1 ~~enters into a contract to acquire an existing health care~~
 2 ~~facility, the person shall submit to the department and the~~
 3 ~~appropriate health systems agency a notice of his intent to~~
 4 ~~acquire the facility and of the services to be offered in~~
 5 ~~the facility and its bed capacity.~~

6 ~~(1)(4)~~ Any person intending to initiate an activity
 7 for which a certificate of need is required shall submit a
 8 letter of intent to the department. After ~~its~~ receipt, the
 9 department shall send the ~~applicant a person an application~~
 10 form requiring the submission of information considered
 11 necessary by the department ~~to determine if the proposed~~
 12 ~~activity meets the standards in 50-5-304. The form and~~
 13 ~~content of the notification of intent and applications for~~
 14 ~~certificates of need shall be prescribed by rule by the~~
 15 department.

16 ~~(2)(2)~~ Within 15 calendar days after receipt of the
 17 application, the department shall determine whether if it is
 18 ~~complete contains sufficient information to determine if the~~
 19 ~~proposed activity meets the standards in 50-5-304. If the~~
 20 application is found incomplete, the department shall
 21 request ~~the necessary~~ additional information. ~~If the~~
 22 ~~applicant fails to submit the necessary additional~~
 23 ~~information requested by the department by the deadline as~~
 24 ~~prescribed by department rules for considering such reviews,~~
 25 ~~a new letter of intent and application must be submitted.~~

1 ~~(3)(6)~~ After the application has been designated
 2 complete, notification must be sent to the applicant and all
 3 other affected persons regarding the department's projected
 4 ~~time schedule~~ for review of the application ~~and the review~~
 5 ~~period time schedule.~~ The review period for the application
 6 may be no longer than 90 calendar days ~~after the notice is~~
 7 ~~sent unless a longer period is agreed to by the applicant.~~
 8 ~~All completed applications pertaining to similar types of~~
 9 ~~services, facilities, or equipment affecting the same health~~
 10 ~~service area may be considered in relation to each other.~~
 11 During the review period a public hearing may be held if
 12 requested by ~~an one or more~~ affected persons ~~person or~~ when
 13 ~~determined necessary by the department.~~

14 ~~(4)(7)~~ The department shall, after considering ~~at~~ the
 15 ~~application, the transcript of a public hearing if one was~~
 16 ~~held, and the~~ comments received during the review period,
 17 issue a certificate of need, with or without conditions, or
 18 reject ~~deny~~ the application. The department shall notify the
 19 applicant and affected persons of its decision."

20 Section 10. Section 50-5-304, MCA, is amended to read:
 21 *50-5-304. Review criteria, required findings, and
 22 standards. The department shall by rule promulgate and
 23 utilize, as appropriate, specific criteria for reviewing
 24 certificate of need applications under this chapter, ~~that~~
 25 ~~including but not limited to the following considerations~~

1 and-required-findings†

2 {1}--the--relationship--of--the--health--services--being
3 reviewed--to--the--applicable--health--systems--plan--and--annual
4 implementation--plan--developed--pursuant--to--Title--XV--of--the
5 Public-Health-Service-Act--as--amended†

6 {2}--the--relationship--of--services--reviewed--to--the
7 long-range-development-plans--if--any--of--the--person--providing
8 or--proposing--the--services†

9 {3}--the--need--that--the--population--served--or--to--be
10 served--by--the--services--has--for--the--services†

11 {4}--the--availability--of--less--costly--quality--equivalent
12 or--more--effective--alternative--methods--of--providing--such
13 services†

14 {5}--the--immediate--and--long-term--financial--feasibility
15 of--the--proposal--as--well--as--the--probable--impact--of--the
16 proposal--on--the--costs--of--and--charges--for--providing--health
17 services--by--the--person--proposing--the--health--services†

18 {6}--the--relationship--and--financial--impact--of--the
19 services--proposed--to--be--provided--to--the--existing--health--care
20 system--of--the--area--in--which--such--services--are--proposed--to--be
21 provided†

22 {7}--the--availability--of--resources--including--health
23 manpower--management--personnel--and--funds--for--capital--and
24 operating--needs--for--the--provision--of--services--proposed--to--be
25 provided--and--the--availability--of--alternative--uses--of--such

1 resources--for--the--provision--of--other--health--services†

2 {8}--the--relationship--including--the--organizational
3 relationship--of--the--health--services--proposed--to--be--provided
4 to--ancillary--or--support--services†

5 {9}--the--special--needs--and--circumstances--of--those
6 entities--which--provide--a--substantial--portion--of--their
7 services--or--resources--or--both--to--individuals--not--residing
8 in--the--health--service--areas--in--which--the--entities--are
9 located--or--in--adjacent--health--service--areas--Such--entities
10 may--include--medical--and--other--health--profession--schools--
11 multidisciplinary--clinics--and--specialty--centers†

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

22 {11}--the--special--needs--and--circumstances--of--biomedical
23 and--behavioral--research--projects--which--are--designed--to--meet
24 a--national--need--and--for--which--local--conditions--offer--special
25 advantages†

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

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

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

{1} address the need of the population to be served by the proposed project and the extent to which this population has access to the proposed project; and

{2} are consistent with the requirements of 42 U.S.C. 300n, et seq., with the federal regulations found in Title 42 CFR, part 123, as amended, and any exceptions which may be granted from them."

Section 11. Section 50-5-305, MCA, is amended to read:

"50-5-305. Period of validity of approved application.

{1} A certificate of need shall terminate 1 year after the date of issuance expire unless an extension is granted pursuant to subsection {2}:

~~{i} the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or~~

{a} 1 year after its issuance if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

{b} 12 months from the estimated time for completion as shown in the application if the approved project is not complete; or

{c} when the department withdraws it for good cause as specified in rules adopted by the department.

~~{2} the certificate of need validity period is extended by the department for one additional period of 6 months upon showing good cause by the applicant for the extension~~

{2} The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon the applicant's demonstrating good cause as defined by department rule.

{3} The holder of an unexpired certificate of need shall report to the department in writing on the status of

1 his project at the end of each 90-day period after being
 2 granted a certificate of need and thereafter until
 3 completion of the project for which the certificate of need
 4 was issued.*

5 Section 12. Section 50-5-306, MCA, is amended to read:

6 "50-5-306. ~~Right--to--hearing--and--appeal~~ Appeal of
 7 certificate of need decisions. (1) ~~The applicant or a health~~
 8 ~~systems agency designated pursuant to Title XV of the Public~~
 9 ~~Health Service Act may request and shall be granted a public~~
 10 ~~hearing before the department to reconsider its decision, if~~
 11 ~~the request is received by the department within 30 calendar~~
 12 ~~days after the decision is announced. Any other affected~~
 13 ~~person may, for good cause, request the department to~~
 14 ~~reconsider its decision at such a hearing. The department~~
 15 ~~shall grant the request if the affected person submits the~~
 16 ~~request in writing showing good cause as defined in rules~~
 17 ~~adopted by the department and if the request is received by~~
 18 ~~the department within 30 calendar days after the decision is~~
 19 ~~announced. The public hearing to reconsider shall be held~~
 20 ~~if warranted or required, within 30 calendar days after its~~
 21 ~~request. The department shall make its final decision and~~
 22 ~~written findings of fact and conclusions of law in support~~
 23 ~~thereof within 45 days after the conclusion of the~~
 24 ~~reconsideration hearing. The hearing shall be conducted in~~
 25 ~~accordance with 2-4-601 through 2-4-623. Within 15 days~~

1 after formal notice of the department's decision is issued,
 2 an affected person may, for good cause shown as defined in
 3 rules adopted by the department, request a hearing before
 4 the department to reconsider its decision. A hearing to
 5 reconsider the decision, if warranted, shall commence within
 6 30 days after the request is received, and a final decision
 7 shall be issued within 45 days after conclusion of the
 8 hearing.

9 (2) ~~An aggrieved applicant or a health systems agency~~
 10 ~~designated pursuant to Title XV of the Public Health Service~~
 11 ~~Act may appeal the department's final decision to the board~~
 12 ~~by filing a written notice of appeal stating the specific~~
 13 ~~findings of fact and conclusions of law being appealed and~~
 14 ~~the grounds. The notice of appeal must be received by the~~
 15 ~~board within 30 calendar days after formal notice of the~~
 16 ~~department's final decision was issued. The board shall give~~
 17 ~~public notice of the appeal within 10 days, and the hearing~~
 18 ~~shall be held within 30 days after receipt of the notice of~~
 19 ~~appeal. An affected person does not have to request the~~
 20 ~~department to hold a reconsideration hearing prior to filing~~
 21 ~~an administrative appeal to the board. An affected person~~
 22 ~~may appeal the department's final decision to the board by~~
 23 ~~filing a written notice of appeal stating the specific~~
 24 ~~findings of fact and conclusions of law being appealed and~~
 25 ~~the grounds therefor. The notice of appeal must be received~~

1 ~~by the board within 30 days after formal notice of the~~
 2 ~~department's final decision was issued. The board shall give~~
 3 ~~public notice of the appeal, and the hearing shall commence~~
 4 ~~within 30 days after receipt of the notice of appeal.~~

5 (3) ~~The scope of the hearing before the board is~~
 6 ~~limited to a review of the record upon which the department~~
 7 ~~made its decision shall be a hearing de novo conducted~~
 8 ~~pursuant to the contested case provisions of the Montana~~
 9 ~~Administrative Procedure Act. The board upon request of any~~
 10 ~~party to an appeal before the board shall hear oral~~
 11 ~~arguments and receive written briefs. Within 45 calendar~~
 12 ~~days after the conclusion of the public hearing, the board~~
 13 ~~shall make and issue its decision, supported by written~~
 14 ~~findings of fact and conclusions of law. The board may~~
 15 ~~affirm, reverse, or modify the department's decision or~~
 16 ~~remand it for further proceedings. The board may reverse or~~
 17 ~~modify the department's decision if the appellant's rights~~
 18 ~~have been prejudiced for any of the reasons found in~~
 19 ~~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 courts. Any affected person or the~~
 23 ~~department may appeal this the decision to the district~~
 24 ~~court as provided in Title 2, chapter 4, part 7.~~

25 (5) The department may by rule prescribe in greater

1 detail the hearing and appellate procedures."

2 Section 13. Section 50-5-308, MCA, is amended to read:
 3 "50-5-308. Special circumstances. ~~In the event of~~
 4 ~~destruction of any part of a health care facility as a~~
 5 ~~result of fire, storm, civil disturbance, or any act of God,~~
 6 ~~the department may issue a certificate of need for only the~~
 7 ~~replacement of the previously existing facility or portion~~
 8 ~~thereof. The department shall issue a certificate of need~~
 9 ~~for a proposed capital expenditure if:~~

10 (1) ~~the capital expenditure is required to eliminate~~
 11 ~~or prevent imminent safety hazards as defined by federal,~~
 12 ~~state, or local fire, building, or life safety codes or~~
 13 ~~regulations, or to comply with state licensure,~~
 14 ~~certification, or accreditation standards; and~~

15 (2) ~~the department has determined that the facility or~~
 16 ~~service for which the capital expenditure is proposed is~~
 17 ~~needed and the obligation of the capital expenditure is~~
 18 ~~consistent with the state health plan."~~

19 Section 14. Codification instruction. (1) Section 2 is
 20 intended to be codified as an integral part of Title 50,
 21 chapter 5, part 1, and the provisions of Title 50, chapter
 22 5, parts 1 through 4, apply to section 2.

23 (2) Section 7 is intended to be codified as an
 24 integral part of Title 50, chapter 5, part 2, and the
 25 provisions of Title 50, chapter 5, parts 1 through 4, apply

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1 to section 7.

2 Section 15. Saving clause. This act does not affect
3 rights and duties that matured, penalties that matured,
4 penalties that were incurred, or proceedings that were begun
5 before the effective date of this act.

-End-