

SENATE BILL NO. 293

INTRODUCED BY HAGER, WINSLOW, MANUEL

BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES AND
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

January 26, 1983	Introduced and referred to Committee on Public Health, Welfare and Safety.
February 19, 1983	Committee recommend bill do pass as amended. Report adopted.
February 21, 1983	Bill printed and placed on members' desks.
February 22, 1983	Second reading, do pass. Correctly engrossed.
February 23, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Human Services.
March 15, 1983	Committee recommend bill be concurred in. Report adopted.
March 18, 1983	Second reading, concurred in.
March 19, 1983	Third reading, concurred in.

IN THE SENATE

March 21, 1983	Returned to Senate. Sent to enrolling. Reported correctly enrolled.
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1 *Senate* BILL NO. *293*
 2 INTRODUCED BY *Hagan W. W. Manuel*
 3 BY REQUEST OF THE DEPARTMENT OF
 4 HEALTH AND ENVIRONMENTAL SCIENCES AND
 5 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 8 CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH
 9 CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301,
 10 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND
 11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

18 (1) "Accreditation" means a designation of approval.

19 (2) "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 (3) "Affected persons" means the applicant, members of
 24 the public who are to be served by the proposal, health care
 25 facilities located in the geographic area affected by the

1 application, agencies which establish rates for health care
 2 facilities, third-party payers who reimburse health care
 3 facilities in the area affected by the proposal, and
 4 agencies which plan or assist in planning for such
 5 facilities, including any agency qualifying as a health
 6 systems agency pursuant to Title XV of the Public Health
 7 Service Act.

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

13 (5) "Batch" means those letters of intent and
 14 applications of a specified category and within a specified
 15 region of the state, as established by department rule, that
 16 are accumulated during a single batching period.

17 (6) "Batching period" means a period, not exceeding 1
 18 month, established by department rule during which letters
 19 of intent for specified categories of new institutional
 20 health services and for specified regions of the state may
 21 be accumulated pending further processing of all letters of
 22 intent within the batch.

23 (5)(7) "Board" means the board of health and
 24 environmental sciences, provided for in 2-15-2104.

25 (8) "Capital expenditure" means an expenditure made by

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or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance.

~~(6)~~(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

~~(7)~~(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radioassay, cytological, immuno-hematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

~~(8)~~(12) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Comparative review" means a joint review of two

or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(9)~~(14) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(10)~~(15) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(11)~~(16) "Federal acts" means federal statutes for the construction of health care facilities.

~~(12)~~(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(13)~~(18) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory

surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

~~(14)~~(19) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

~~(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2.~~

~~(15)~~(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(16)~~(22) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or

may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(17)~~(23) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

~~(18)~~(24) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

~~(19)~~(25) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

~~(20)~~(26) (a) "Long-term care facility" means a facility

1 or part thereof which provides skilled nursing care or
2 intermediate nursing care to a total of two or more persons
3 or personal care to more than three persons who are not
4 related to the owner or administrator by blood or marriage,
5 with these degrees of care defined as follows:

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

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

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

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

22 (27) "Major medical equipment" means a single unit of
23 medical equipment or a single system of components with
24 related functions which is used to provide medical or other
25 health services and which costs more than the expenditure

1 thresholds established in or pursuant to 50-5-301(5). The
2 term does not include medical equipment acquired by or on
3 behalf of a clinical laboratory to provide clinical
4 laboratory services if the clinical laboratory is
5 independent of a physician's office or hospital and has been
6 determined under Title XVIII of the Social Security Act to
7 meet the requirements of paragraphs (10) and (11) of section
8 1861(s) of that act.

9 ~~(21)(28) "Mental health center" means a facility~~
10 ~~providing services for the prevention or diagnosis of mental~~
11 ~~illness, the care and treatment of mentally ill patients or~~
12 ~~the rehabilitation of such persons, or any combination of~~
13 ~~these services.~~

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

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

~~acquisition shall be considered a capital expenditure
subject to reviews~~

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

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

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

~~(23)(29) "Nonprofit health care facility" means a
health care facility owned or operated by one or more
nonprofit corporations or associations.~~

~~(24)(30) "Observation bed" means a bed occupied for not
more than 6 hours by a patient recovering from surgery or
other treatment.~~

~~(25)(31) "Offer" means the holding out by a health care
facility that it can provide specific health services.~~

~~(26)(32) "Outpatient facility" means a facility,~~

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

~~(27)(33)~~ "Patient" means an individual obtaining
services, including skilled nursing care, from a health care
facility.

~~(28)(34)~~ "Person" means any individual, firm,
partnership, association, organization, agency, institution,
corporation, trust, estate, or governmental unit, whether
organized for profit or not.

~~(29)(35)~~ "Public health center" means a publicly owned
facility providing health services, including laboratories,
clinics, and administrative offices.

~~(30)(36)~~ "Rehabilitation facility" means a facility
which is operated for the primary purpose of assisting in
the rehabilitation of disabled persons by providing
comprehensive medical evaluations and services,
psychological and social services, or vocational evaluation
and training or any combination of these services and in
which the major portion of the services is furnished within
the facility.

~~(31)(37)~~ "Resident" means a person who is in a
long-term care facility for intermediate or personal care.

1 ~~{32} "State plan" means the state medical facility plan~~
2 ~~provided for in part 4.~~

3 {38} "State health plan" means the plan prepared by the
4 department pursuant to 42 U.S.C. 300n-2(a)(2)."

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

6 "50-5-301. When application certificate of need is
7 required. {1} Unless a person has submitted an application
8 ~~has been submitted to and for and is the holder of a~~
9 ~~certificate of need granted by the department, no person he~~
10 ~~may not~~ initiate any of the following:

11 ~~{1} a new institutional health service as defined in~~
12 ~~50-5-101.~~

13 ~~{2} any expenditure by or on behalf of a health care~~
14 ~~facility in excess of \$150,000 made in preparation for the~~
15 ~~offering or development of a new institutional health~~
16 ~~service and any arrangement or commitment made for financing~~
17 ~~the offering or development of the new institutional health~~
18 ~~services. Expenditures made in the preparation for the~~
19 ~~offering of a new institutional health service shall include~~
20 ~~expenditures for architectural designs, preliminary plans,~~
21 ~~working drawings, specifications, studies and surveys.~~

22 {a} the incurring of an obligation by or on behalf of
23 a health care facility for any capital expenditure, other
24 than to acquire an existing health care facility, that
25 exceeds the expenditure thresholds established in or

1 pursuant to subsection {5}. The costs of any studies,
2 surveys, designs, plans, working drawings, specifications,
3 and other activities (including staff effort and consulting
4 and other services) essential to the acquisition,
5 improvement, expansion, or replacement of any plant or
6 equipment with respect to which an expenditure is made must
7 be included in determining if the expenditure exceeds the
8 expenditure thresholds.

9 {b} a change in the bed capacity of a health care
10 facility by 10 beds or 10%, whichever is less, in any 2-year
11 period through:

12 {i} an increase or decrease in the total number of
13 beds;

14 {ii} a redistribution of beds among various categories;
15 or

16 {iii} a relocation of beds from one physical facility
17 or site to another;

18 {c} the addition of a health service that is offered
19 by or on behalf of a health care facility which was not
20 offered by or on behalf of the facility within the 12-month
21 period before the month in which the service would be
22 offered and which will result in additional annual operating
23 and amortization expenses of \$50,000 or more;

24 {d} the acquisition by any person of major medical
25 equipment. In determining whether medical equipment costs

more than the expenditure thresholds established in subsection (5), the costs of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(e) the incurring of an obligation for a capital expenditure by any person to acquire an existing health care facility if:

(i) the person has failed to submit the notice of intent required by 50-5-302(3); or

(ii) the department finds within 30 days after it receives the notice of intent required by 50-5-302(3) that the acquisition will result in a change in the services or bed capacity of the facility;

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

(g) the expansion of the geographical service area of a home health agency.

(2) For purposes of this section:

(a) "obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building

program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1;

(b) a health maintenance organization is to be considered a health care facility except to the extent exempted from certificate of need requirements as prescribed in rules adopted by the department.

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

(4) If a person acquires an existing health care facility without a certificate of need and proposes to change, within 1 year after the acquisition, the services or bed capacity of the health care facility, the proposed change requires a certificate of need if one would have been required originally under subsection (1)(e).

(5) (a) Expenditure thresholds for certificate of need review are established as follows:

1 (i) For acquisition of equipment, the expenditure
2 threshold is \$500,000.

3 (ii) For construction of health care facilities, the
4 expenditure threshold is \$750,000.

5 (b) The department may by rule establish thresholds
6 higher than those established in subsection (5)(a) if
7 necessary and appropriate to accomplish the objectives of
8 this part."

9 Section 3. Section 50-5-302, MCA, is amended to read:
10 "50-5-302. Application Notice of intent -- application
11 and review process. (1) The department may adopt rules
12 including but not limited to rules for:

13 (a) the form and content of notices of intent and
14 applications;

15 (b) the scheduling and consolidation of reviews of
16 similar proposals;

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

18 (i) does not significantly affect the cost or use of
19 health care;

20 (ii) is necessary to eliminate or prevent imminent
21 safety hazards or to repair or replace a facility damaged or
22 destroyed as a result of fire, storm, civil disturbance, or
23 any act of God;

24 (iii) is necessary to comply with licensure or
25 certification standards; or

1 (iv) has been approved by the legislature pursuant to
2 the long-range building program under Title 17, chapter 5,
3 part 4, and Title 18, chapter 2, part 1, providing the
4 legislative findings accompanying such approval give
5 consideration to the criteria of 50-5-304, and subject to
6 the provisions of [section 9];

7 (d) the format of public informational hearings and
8 reconsideration hearings; and

9 (e) the establishment of batching periods for
10 certificate of need applications for new beds, establishment
11 of new services, expansion of existing services, and
12 replacement of health care facilities.

13 (2) At least 30 days before any person acquires or
14 enters into a contract to acquire an existing health care
15 facility, the person shall submit to the department and the
16 appropriate health systems agency a notice of his intent to
17 acquire the facility and of the services to be offered in
18 the facility and its bed capacity.

19 (3) Any person intending to initiate an activity
20 for which a certificate of need is required shall submit a
21 letter of intent to the department. After receipt The letter
22 of intent must be placed in the appropriate batch, if any.
23 After expiration of the challenge period following the
24 batching period in which the letter of intent was submitted
25 or if no batching is required, after receipt of the letter

~~of intent, the department shall send the applicant a person an application form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.~~

(2)(4) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304 is complete. If the application is found incomplete, the department shall request the necessary additional information. If the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch.

(3)(5) After the application has all applications in the current batch have been designated complete or, if an application does not require batching, after it is designated complete, notification must be sent to the applicant applicants and all other affected persons regarding the department's projected time schedule for review of the application and the review period time

schedule applications. The review period for the an application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant or, if the application has been batched, by all applicants in the batch. All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other. During the review period a public hearing may be held if requested by one or more an affected persons person or when considered appropriate by the department.

(4)(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period."

Section 4. Section 50-5-304, MCA, is amended to read:
"50-5-304. Review criteria, required findings, and standards. (1) The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1)(a) the relationship of the health services being

1 reviewed to the applicable health systems plan, state health
 2 plan, and annual implementation plan developed pursuant to
 3 Title XV of the Public Health Service Act, as amended;

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

7 (3)(c) the need that the population served or to be
 8 served by the services has for the services;

9 (4)(d) the availability of less costly quality
 10 equivalent or more effective alternative methods of
 11 providing such services;

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

16 (6)(f) the relationship and financial impact of the
 17 services proposed to be provided to the existing health care
 18 system of the area in which such services are proposed to be
 19 provided and the consistency of the proposal with joint
 20 planning efforts by health care providers in the area;

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

1 (8)(h) the relationship, including the organizational
 2 relationship, of the health services proposed to be provided
 3 to ancillary or support services;

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

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

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

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

(2) If an application for new long-term care beds will involve new or increased use of medicaid funds and the department of social and rehabilitation services determines that such use would cause the state medicaid budget for long-term care facilities to be exceeded, the department of health and environmental sciences may impose conditions on a certificate of need for new long-term care beds, including limitation on the number of approved beds which may be certified for medicaid patients. Availability of medicaid funding may be the basis for imposing conditions but may not be the sole basis for denial of a certificate of need."

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

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

~~A (1) Unless an extension is granted pursuant to subsection (2), a certificate of need shall terminate 1 year after the date of issuance unless expire:~~

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

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

(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) 1 year from the estimated time for completion as shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(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 his project at the end of each 90-day period after being granted a certificate of need until completion of the project for which the certificate of need was issued."

Section 6. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. (1) ~~The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act~~ An affected person may request and ~~shall be granted a public hearing before the department to hold a public hearing and to reconsider its decision if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing.~~ The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 20 calendar days after the initial decision is announced. The public hearing to reconsider shall be held, if warranted or

required, within ~~30~~ 20 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 30 days after the conclusion of the reconsideration hearing. ~~The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.~~

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

(3) ~~The scope of the hearing before the board is limited to a review of the record upon which the department made its decision~~ must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the

~~contested case provisions of the Montana Administrative Procedure Act. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, reverse, or modify the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

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

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

Section 7. Section 50-5-308, MCA, is amended to read:

~~"50-5-308. 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. The department shall issue a certificate of need~~

~~for a proposed capital expenditure if:~~

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

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

NEW SECTION. Section 8. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including

1 inflation;

2 (ii) trends in use of services;

3 (iii) trends in medicaid recipient levels; and

4 (iv) the effects of new and projected facilities and

5 services for which a need has been identified in the state

6 health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

7 (2) In addition to the report, the department of

8 social and rehabilitation services shall present a

9 recommendation of funding levels for the medicaid program.

10 The recommendation need not be consistent with the state

11 health plan.

12 (3) In arriving at the projections and recommendation

13 required in subsections (1) and (2), the department of

14 social and rehabilitation services shall consult with the

15 department of health and environmental sciences.

16 (4) In making its appropriations for medicaid funding,

17 the legislature shall specify the portions of medicaid

18 funding anticipated to be allocated to specific categories

19 and types of health care services.

20 NEW SECTION. Section 9. Exemptions from certificate

21 of need review. (1) Except as provided in subsection (2),

22 the following are exempt from certificate of need review:

23 (a) expenditures by a health care facility for

24 nonmedical and nonclinical facilities and services unrelated

25 to the operation of the health care facility if a letter of

1 intent is submitted pursuant to 50-5-302 at least 30 days

2 prior to incurring an obligation for capital expenditures to

3 enable the department to determine whether the expenditures

4 are exempt;

5 (b) a project proposed by an agency of state

6 government that has been approved by the legislature

7 pursuant to the long-range building program under Title 17,

8 chapter 5, part 4, and Title 18, chapter 2, part 1.

9 (2) If the secretary of the United States department

10 of health and human services notifies the state that the

11 sanctions provided by section 1521 of the Public Health

12 Service Act and all acts amendatory thereto or any other

13 federal statute for noncompliance with federal certificate

14 of need requirements are to be imposed, the department may

15 by rule require certificate of need review for projects

16 exempted by subsection (1) that are otherwise subject to the

17 provisions of this part. Any rule adopted by the department

18 under this subsection is effective only until the 10th day

19 of the next regular legislative session following the

20 adoption of the rule.

21 NEW SECTION. Section 10. Codification instructions.

22 (1) Section 8 is intended to be codified as an integral part

23 of Title 53, chapter 6, part 1, and the provisions of Title

24 53, chapter 6, part 1, apply to section 8.

25 (2) Section 9 is intended to be codified as an

1 integral part of Title 50, chapter 5, part 3, and the
2 provisions of Title 50, chapter 5, apply to section 9.

3 NEW SECTION. Section 11. Severability. If a part of
4 this act is invalid, all valid parts that are severable from
5 the invalid part remain in effect. If a part of this act is
6 invalid in one or more of its applications, the part remains
7 in effect in all valid applications that are severable from
8 the invalid applications.

9 NEW SECTION. Section 12. Saving clause. This act does
10 not affect rights and duties that matured, penalties that
11 were incurred, or proceedings that were begun before the
12 effective date of this act.

13 NEW SECTION. Section 13. Effective date. This act is
14 effective on passage and approval.

-End-

Approved by Committee
on Public Health, Welfare
& Safety

1 SENATE BILL NO. 293
2 INTRODUCED BY HAGER, WINSLOW, MANUEL
3 BY REQUEST OF THE DEPARTMENT OF
4 HEALTH AND ENVIRONMENTAL SCIENCES AND
5 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
6
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
8 CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH
9 CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301,
10 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND DELAYED EFFECTIVE
12 DATES."
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) "Accreditation" means a designation of approval.
20 (2) "Adult day-care center" means a facility,
21 free-standing or connected to another health care facility,
22 which provides adults, on an intermittent basis, with the
23 care necessary to meet the needs of daily living.
24 (3) "Affected persons" means the applicant, members of
25 the public who are to be served by the proposal, health care

1 facilities located in the geographic area affected by the
2 application, agencies which establish rates for health care
3 facilities, ~~third-party payers who reimburse health care~~
4 ~~facilities in the area affected by the proposal,~~ and
5 agencies which plan or assist in planning for such
6 facilities, including any agency qualifying as a health
7 systems agency pursuant to Title XV of the Public Health
8 Service Act.

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

14 (5) ~~"Batch" means those letters of intent and~~
15 ~~applications of a specified category and within a specified~~
16 ~~region of the state, as established by department rule, that~~
17 ~~are accumulated during a single batching period.~~

18 (6) ~~"Batching period" means a period, not exceeding 1~~
19 ~~month, established by department rule during which letters~~
20 ~~of intent for specified categories of new institutional~~
21 ~~health services and for specified regions of the state may~~
22 ~~be accumulated pending further processing of all letters of~~
23 ~~intent within the batch.~~

24 (5)(1) "Board" means the board of health and
25 environmental sciences, provided for in 2-15-2104.

1 (81) "Capital expenditure" means an expenditure made by
 2 or on behalf of a health care facility that, under generally
 3 accepted accounting principles, is not properly chargeable
 4 as an expense of operation and maintenance.

5 (67)(9) "Certificate of need" means a written
 6 authorization by the department for a person to proceed with
 7 a proposal subject to 50-5-301.

8 (10) "Challenge period" means a period, not exceeding 1
 9 month, established by department rule during which any
 10 person may apply for comparative review with an applicant
 11 whose letter of intent has been received during the
 12 preceding batching period.

13 (77)(11) "Clinical laboratory" means a facility for the
 14 microbiological, serological, chemical, hematological,
 15 radioassay, cytological, immuno-hematological,
 16 pathological, or other examination of materials derived from
 17 the human body for the purpose of providing information for
 18 the diagnosis, prevention, or treatment of any disease or
 19 assessment of a medical condition.

20 (87)(12) "College of American pathologists" means the
 21 organization nationally recognized by that name with
 22 headquarters in Traverse City, Michigan, that surveys
 23 clinical laboratories upon their requests and accredits
 24 clinical laboratories that it finds meet its standards and
 25 requirements.

1 (13) "Comparative review" means a joint review of two
 2 or more certificate of need applications within a given
 3 batch which are determined by the department to be
 4 competitive in that the granting of a certificate of need to
 5 one of the applicants would substantially prejudice the
 6 department's review of the other applications.

7 (97)(14) "Construction" means the physical erection of a
 8 health care facility and any stage thereof, including ground
 9 breaking, or remodeling, replacement, or renovation of an
 10 existing health care facility.

11 (107)(15) "Department" means the department of health
 12 and environmental sciences provided for in Title 2, chapter
 13 15, part 21.

14 (117)(16) "Federal acts" means federal statutes for the
 15 construction of health care facilities.

16 (127)(17) "Governmental unit" means the state, a state
 17 agency, a county, municipality, or political subdivision of
 18 the state, or an agency of a political subdivision.

19 (137)(18) "Health care facility" or "facility" means
 20 any institution, building, or agency or portion thereof,
 21 private or public, excluding federal facilities, whether
 22 organized for profit or not, used, operated, or designed to
 23 provide health services, medical treatment, or nursing,
 24 rehabilitative, or preventive care to any person or persons.
 25 The term does not include offices of private physicians or

dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

~~(14)~~(19) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

~~(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2.~~

~~(15)~~(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(16)~~(22) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of

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

~~(17)~~(23) "Infirmity" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

~~(18)~~(24) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

~~(19)~~(25) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

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

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

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

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

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

(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other

health services and which costs more than the expenditure that would be established in or pursuant to 50-5-301(5). The term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (1)(i) and (1)(ii) of section 1861 of that act.

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

(22) "New institutional health services" means:

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

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

review--if--the--acquisition--had--been--by--purchase--such
acquisition--shall--be--considered--a--capital--expenditure
subject-to-review

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

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

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

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

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

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

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

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

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

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

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

(31)(37) "Resident" means a person who is in a

long-term care facility for intermediate or personal care.

~~(32) "State plan" means the state medical facility plan provided for in part 4.~~

(38) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2).

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

"50-5-301. When application certificate of need is required, (1) Unless a person has submitted an application has been submitted to and for and is the holder of a certificate of need granted by the department, no person he may not initiate any of the following:

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

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

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility, that

exceeds the expenditure thresholds established in or pursuant to subsection (5). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility by 10 beds or 10%, whichever is less, in any 2-year period through:

(i) an increase or decrease in the total number of beds;

(ii) a redistribution of beds among various categories;

or
(iii) a relocation of beds from one physical facility or site to another;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of \$50,000 \$100,000 or more;

(d) the acquisition by any person of major medical

1 equipment--in--determining--whether--medical--equipment--costs
 2 were--then--the--expenditure--thresholds--established--in
 3 subsection--(5)--the--costs--of--studies--surveys--designs
 4 plans--working--drawings--specifications--and--other
 5 activities--essential--to--acquiring--the--equipment--must--be
 6 included--if--the--equipment--is--acquired--for--less--than--fair
 7 market--value--the--term--"cost"--includes--the--fair--market
 8 value. PROVIDED SUCH ACQUISITION WOULD HAVE REQUIRED A
 9 CERTIFICATE OF NEED PURSUANT TO SUBSECTION (1)(A) OR (1)(C)
 10 OF THIS SECTION IF IT HAD BEEN MADE BY OR ON BEHALF OF A
 11 HEALTH CARE FACILITY.

12 (e) the incurring of an obligation for a capital
 13 expenditure by any person to acquire an existing health care
 14 facility if:

15 (i) the person has failed to submit the notice of
 16 intent required by 50-5-302(3); or

17 (ii) the department finds within 30 days after it
 18 receives the notice of intent required by 50-5-302(3) that
 19 the acquisition will result in a change in the services or
 20 bed capacity of the facility;

21 (f) the construction, development, or other
 22 establishment of a health care facility which did not
 23 previously exist or which is being replaced; or

24 (g) the expansion of the geographical service area of
 25 a home health agency.

1 (2) For purposes of this section:

2 (a) "obligation for capital expenditure" does not
 3 include the authorization of bond sales or the offering or
 4 sale of bonds pursuant to the state long-range building
 5 program under Title 17, chapter 5, part 4, and Title 18,
 6 chapter 2, part 1;

7 (b) a health maintenance organization is to be
 8 considered a health care facility except to the extent
 9 exempted from certificate of need requirements as prescribed
 10 in rules adopted by the department.

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

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

1 change requires a certificate of need if one would have been
2 required originally under subsection (1)(a).

3 (5) (a) Expenditure thresholds for certificate of need
4 review are established as follows:

5 (i) For acquisition of equipment, the expenditure
6 threshold is \$500,000.

7 (ii) For construction of health care facilities, the
8 expenditure threshold is \$750,000.

9 (b) The department may by rule establish thresholds
10 higher than those established in subsection (5)(a) if
11 necessary and appropriate to accomplish the objectives of
12 this part."

13 Section 3. Section 50-5-302, MCA, is amended to read:

14 "50-5-302. Application Notice of intent -- application
15 and review process. (1) The department may adopt rules
16 including but not limited to rules for:

17 (a) the form and content of notices of intent and
18 applications;

19 (b) the scheduling and consolidation of reviews of
20 similar proposals;

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

22 (i) does not significantly affect the cost or use of
23 health care;

24 (ii) is necessary to eliminate or prevent imminent
25 safety hazards or to repair or replace a facility damaged or

1 destroyed as a result of fire, storm, civil disturbance, or
2 any act of God;

3 (iii) is necessary to comply with licensure or
4 certification standards; or

5 (iv) has been approved by the legislature pursuant to
6 the long-range building program under Title 17, chapter 5,
7 part 4, and Title 18, chapter 2, part 1, providing the
8 legislative findings accompanying such approval give
9 consideration to the criteria of 50-5-304, and subject to
10 the provisions of [section 9];

11 (d) the format of public informational hearings and
12 reconsideration hearings; and

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds, establishment
15 of new services, expansion of existing services, and
16 replacement of health care facilities.

17 (2) At least 30 days before any person acquires or
18 enters into a contract to acquire an existing health care
19 facility, the person shall submit to the department and the
20 appropriate health systems agency a notice of his intent to
21 acquire the facility and of the services to be offered in
22 the facility and its bed capacity.

23 (3) Any person intending to initiate an activity
24 for which a certificate of need is required shall submit a
25 letter of intent to the department. After receipt the letter

1 of intent must be placed in the appropriate batch, if any.
 2 After expiration of the challenge period following the
 3 batching period in which the letter of intent was submitted
 4 or if no batching is required, after receipt of the letter
 5 of intent, the department shall send the applicant a person
 6 an application form requiring the submission of information
 7 considered necessary by the department to determine if the
 8 proposed activity meets the standards in 50-5-304. The form
 9 and content of the notification of intent and applications
 10 for certificates of need shall be prescribed by rule by the
 11 department.

12 (2)(4) Within 15 calendar days after receipt of the
 13 application, the department shall determine whether it
 14 contains sufficient information to determine if the proposed
 15 activity meets the standards in 50-5-304 is complete. If,
 16 AFTER THE 15 DAYS, the application is found incomplete, the
 17 department shall request the necessary additional
 18 information WITHIN 5 WORKING DAYS. UPON RECEIPT OF THE
 19 ADDITIONAL INFORMATION FROM THE APPLICATION, THE DEPARTMENT
 20 SHALL HAVE 15 DAYS TO DETERMINE IF THE APPLICATION IS
 21 COMPLETE. IF THE DEPARTMENT FAILS TO MAKE A DETERMINATION
 22 AS TO THE COMPLETENESS OF THE APPLICATION WITHIN THE
 23 PRESCRIBED 15-DAY PERIOD, THE APPLICATION SHALL BE DEEMED TO
 24 BE COMPLETE. If the applicant fails to submit the necessary
 25 additional information requested by the department by the

1 deadline as prescribed by department rules for considering
 2 such reviews, a new letter of intent and application must be
 3 submitted and the application will be dropped from the
 4 current batch.

5 (3)(5) After the application has all applications in
 6 the current batch have been designated complete or, if an
 7 application does not require batching, after it is
 8 designated complete, notification must be sent to the
 9 applicant applicants and all other affected persons
 10 regarding the department's projected time schedule for
 11 review of the application and the review period time
 12 schedule applications. The review period for the an
 13 application may be no longer than 90 calendar days after the
 14 notice is sent unless a longer period is agreed to by the
 15 applicant or, if the application has been batched, by all
 16 applicants in the batch. All completed applications
 17 pertaining to similar types of services, facilities, or
 18 equipment affecting the same health service area may be
 19 considered in relation to each other. During the review
 20 period a public hearing may be held if requested by one or
 21 more an affected persons person or when considered
 22 appropriate by the department.

23 (4)(6) The department shall, after considering all
 24 comments received during the review period, issue a
 25 certificate of need, with or without conditions, or reject

1 deny the application. The department shall notify the
 2 applicant and affected persons of its decision within 5
 3 working days after expiration of the review period. IE THE
 4 DEPARTMENT FAILS TO REACH A DECISION AND NOTIFY THE
 5 APPLICANT OF ITS DECISION WITHIN THE DEADLINES ESTABLISHED
 6 IN THIS SECTION AND IE THAT DELAY CONSTITUTES AN ABUSE OF
 7 THE DEPARTMENT'S DISCRETION, THE APPLICANT MAY APPLY TO
 8 DISTRICT COURT FOR A WRIT OF HABEAS CORPUS TO FORCE THE
 9 DEPARTMENT TO RENDER A DECISION."

10 Section 4. Section 50-5-304, MCA, is amended to read:
 11 "50-5-304. Review criteria, required findings, and
 12 standards. (1) The department shall by rule promulgate and
 13 utilize, as appropriate, specific criteria for reviewing
 14 certificate of need applications under this chapter,
 15 including but not limited to the following considerations
 16 and required findings:

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

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

24 (3)(c) the need that the population served or to be
 25 served by the services has for the services;

1 (4)(d) the availability of less costly quality
 2 equivalent or more effective alternative methods of
 3 providing such services;

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

8 (6)(f) the relationship and financial impact of the
 9 services proposed to be provided to the existing health care
 10 system of the area in which such services are proposed to be
 11 provided and the consistency of the proposal with joint
 12 planning efforts by health care providers in the area;

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

18 (8)(h) the relationship, including the organizational
 19 relationship, of the health services proposed to be provided
 20 to ancillary or support services;

21 (9)(i) the special needs and circumstances of those
 22 entities which provide a substantial portion of their
 23 services or resources, or both, to individuals not residing
 24 in the health service areas in which the entities are
 25 located or in adjacent health service areas. Such entities

1 may include medical and other health profession schools,
2 multidisciplinary clinics, and specialty centers.

3 ~~††0†11~~ the special needs and circumstances of health
4 maintenance organizations for which assistance may be
5 provided under Title XIII of the Public Health Service Act.
6 Such needs and circumstances include the needs of and costs
7 to members and projected members of the health maintenance
8 organization in obtaining health services and the potential
9 for a reduction in the use of inpatient care in the
10 community through an extension of preventive health services
11 and the provision of more systematic and comprehensive
12 health services.

13 ~~††††11~~ the special needs and circumstances of
14 biomedical and behavioral research projects which are
15 designed to meet a national need and for which local
16 conditions offer special advantages;

17 ~~††2†11~~ in the case of a construction project, the
18 costs and methods of the proposed construction, including
19 the costs and methods of energy provision, and the probable
20 impact of the construction project reviewed on the costs of
21 providing health services by the person proposing the
22 construction project;

23 ~~††3†10~~ the distance, convenience, cost of
24 transportation, and accessibility of health services for
25 persons who live outside urban areas in relation to the

1 proposal; and

2 ~~††4†10~~ any other criteria, required findings, or
3 requirements for reviewing certificate of need applications
4 cited in the federal regulations found in Title 42, CFR,
5 Part 123, as amended.

6 ~~†21. If an application for new long-term care beds will~~
7 ~~involve new or increased use of medicaid funds and the~~
8 ~~department of social and rehabilitation services determines~~
9 ~~that such use would cause the state medicaid budget for~~
10 ~~long-term care facilities to be exceeded, the department of~~
11 ~~health and environmental sciences may impose conditions on a~~
12 ~~certificate of need for new long-term care beds, including~~
13 ~~limitation on the number of approved beds which may be~~
14 ~~certified for medicaid patients. Availability of medicaid~~
15 ~~funding may be the basis for imposing conditions but may not~~
16 ~~be the sole basis for denial of a certificate of need. THE~~
17 ~~DEPARTMENT MAY ADOPT RULES FOR THE IMPOSITION OF SUCH~~
18 ~~CONDITIONS, BUT ONLY IF THE SECRETARY OF THE UNITED STATES~~
19 ~~DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN~~
20 ~~AMENDMENT TO THE STATE'S MEDICAID PLAN, ADOPTED PURSUANT TO~~
21 ~~42 U.S.C. 1396A, ALLOWING FOR THE IMPOSITION OF SUCH~~
22 ~~CONDITIONS."~~

23 Section 5. Section 50-5-305, MCA, is amended to read:
24 "50-5-305. Period of validity of approved application.
25 A ~~†11 Unless an extension is granted pursuant to subsection~~

1 (2) a certificate of need shall terminate 1 year after the
2 date of issuance unless expire:

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

7 (2) the certificate of need validity period is
8 extended by the department for one additional period of 6
9 months upon showing good cause by the applicant for the
10 extension;

11 (a) 1 year after its issuance if the applicant has not
12 commenced construction on a project requiring construction
13 or has not incurred an enforceable capital expenditure
14 commitment for a project not requiring construction;

15 (b) 1 year from the estimated time for completion as
16 shown in the application if the approved project is not
17 complete; or

18 (c) when the department determines, after opportunity
19 for a hearing, that the holder of the certificate of need
20 has violated the provisions of this chapter, rules adopted
21 hereunder, or the terms of the certificate of need.

22 (3) The holder of an unexpired certificate of need may
23 apply to the department to extend the term of the
24 certificate of need for one additional period not to exceed
25 6 months. The department may grant such an extension upon

1 the applicant's demonstrating good cause as defined by
2 department rules.

3 (3) The holder of an unexpired certificate of need
4 shall report to the department in writing on the status of
5 his project at the end of each 90-day period after being
6 granted a certificate of need until completion of the
7 project for which the certificate of need was issued."

8 Section 6. Section 50-5-306, MCA, is amended to read:

9 "50-5-306. Right to hearing and appeal. (1) The
10 applicant or a health systems agency designated pursuant to
11 Title XV of the Public Health Service Act. An affected person
12 may request and shall be granted a public hearing before the
13 department to hold a public hearing and to reconsider its
14 decision if the request is received by the department
15 within 30 calendar days after the decision is announced. Any
16 other affected person may, for good cause, request the
17 department to reconsider its decision at such a hearing.
18 The department shall grant the request if the affected
19 person submits the request in writing showing good cause as
20 defined in rules adopted by the department and if the
21 request is received by the department within 30 20 calendar
22 days after the initial decision is announced. The public
23 hearing to reconsider shall be held, if warranted or
24 required, within 30 20 calendar days after its request. The
25 department shall make its final decision and written

findings of fact and conclusions of law in support thereof within 45 20 days after the conclusion of the reconsideration hearing. ~~The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.~~

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

(3) ~~The scope of the hearing before the board is limited to a review of the record upon which the department made its decision must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2), and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act. The board, upon request of any party to an~~

~~appeal before the board, shall hear oral arguments and receive written briefs.~~ Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, ~~reverse, or~~ modify the department's decision or remand it for further proceedings. ~~The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

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

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

Section 7. Section 50-5-308, MCA, is amended to read:

"50-5-308. 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. The department shall issue a certificate of need for a proposed capital expenditure if:~~

~~(1) the capital expenditure is required to eliminate~~

~~or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and~~

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

NEW SECTION. Section 8. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) In addition to the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

NEW SECTION. Section 9. Exemptions from certificate of need review. (1) Except as provided in subsection (2), the following are exempt from certificate of need review:

(a) expenditures by a health care facility for nonmedical and nonclinical facilities and services unrelated to the operation of the health care facility if a letter of intent is submitted pursuant to 50-5-302 at least 30 days prior to incurring an obligation for capital expenditures to

enable the department to determine whether the expenditures are exempt;

(b) a project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(2) If the secretary of the United States department of health and human services notifies the state that the sanctions provided by section 1521 of the Public Health Service Act and all acts amendatory thereto or any other federal statute for noncompliance with federal certificate of need requirements are to be imposed, the department may by rule require certificate of need review for projects exempted by subsection (1) that are otherwise subject to the provisions of this part. Any rule adopted by the department under this subsection is effective only until the 10th day of the next regular legislative session following the adoption of the rule.

NEW SECTION. Section 10. Codification instructions.

(1) Section 8 is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to section 8.

(2) Section 9 is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, apply to section 9.

NEW SECTION. Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 13. Effective date DATES. (1) This act is effective on passage and approval, ~~WITH DELAYED EFFECTIVE DATES.~~

~~(2) ON JULY 1, 1987, 50-5-301, 50-5-302, AND 50-5-304 THROUGH 50-5-308, MCA, AND SECTIONS 3 THROUGH 10 HEREOF ARE REPEALED UNLESS REENACTED BY THE LEGISLATURE.~~

~~(3) ON JULY 1, 1987, 50-5-101, MCA, IS AMENDED BY DELETING SUBSECTIONS (3), (5), (6), (8), (9), (10), (13), (14), AND (27) UNLESS REENACTED BY THE LEGISLATURE.~~

~~(4) ON JULY 1, 1987, 50-5-106, MCA, IS AMENDED TO READ AS FOLLOWS, UNLESS REENACTED BY THE LEGISLATURE:~~

~~"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care~~

1 facility shall submit an annual report for the preceding
 2 calendar year to the department. The report shall be on
 3 forms and contain information specified by the department.
 4 Information received by the department or board through
 5 reports, inspections, or provisions of parts 1 and 2 may not
 6 be disclosed in a way which would identify patients. A
 7 department employee who discloses information which would
 8 identify a patient shall be dismissed from employment and
 9 subject to the provision of 45-7-401, unless the disclosure
 10 was authorized in writing by the patient, his guardian, or
 11 his agent. Information and statistical reports from health
 12 care facilities which are considered necessary by the
 13 department for health planning and resource development
 14 activities will be made available to the public and the
 15 health planning agencies within the state. ~~Applications by~~
 16 ~~health-care-facilities-for--certificates--of--need--and--any~~
 17 ~~information---relevant---to---review---of---these---applications,~~
 18 ~~pursuant-to-part-3, shall be accessible to the public."~~

-End-

SENATE BILL NO. 293

INTRODUCED BY HAGER, WINSLOW, MANUEL

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES AND

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND DELAYED EFFECTIVE DATES."

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 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

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

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care

facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, third-party payers who reimburse health care facilities in the area affected by the proposal, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

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

(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state, as established by department rule, that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.

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

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

~~(6)(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.~~

~~(7)(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radioassay, cytological, immuno-hematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.~~

~~(8)(12) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.~~

~~(13) "Comparative review" means a joint review of two or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.~~

~~(9)(14) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.~~

~~(10)(15) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.~~

~~(11)(16) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(12)(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.~~

~~(13)(18) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or~~

dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

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

~~(120) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2.~~

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

(122) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of

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

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

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

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

(124) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

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

~~(20)(26)~~ (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

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

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

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

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

~~(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other~~

~~health services and which costs more than the expenditure thresholds established in or pursuant to 58-5-301(5). The term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (1)(B) and (1)(C) of section 1861(s) of that act.~~

~~(21)(28) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.~~

~~(22) "New institutional health services" means:~~
~~(a) the construction, development, or other establishment of a health care facility which did not previously exist;~~

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

review--if--the--acquisition--had--been--by--purchaser--such
acquisition--shall--be--considered--a--capital--expenditure
subject-to-review

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

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

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

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

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

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

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

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

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

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

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

(31)(137) "Resident" means a person who is in a

long-term care facility for intermediate or personal care.
~~(32) "State plan" means the state medical facility plan provided for in part 4;~~

~~(38) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2)."~~

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

"50-5-301. When application certificate of need is required, (1) Unless a person has submitted an application has been submitted to and for and is the holder of a certificate of need granted by the department, no person may initiate any of the following:

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

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

~~(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditures other than to acquire an existing health care facility; that~~

~~exceeds the expenditure thresholds established in or pursuant to subsection (5). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.~~

~~(b) a change in the bed capacity of a health care facility by 10 beds or 10%, whichever is less, in any 2-year period through:~~

~~(i) an increase or decrease in the total number of beds;~~

~~(ii) a redistribution of beds among various categories;~~

~~or~~
~~(iii) a relocation of beds from one physical facility or site to another;~~

~~(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of \$50,000 \$100,000 or more;~~

~~(d) the acquisition by any person of major medical~~

1 equipment--to--determining--whether--medical--equipment--costs
 2 were--than--the--expenditure--thresholds--established--in
 3 subsection--(5)(v)--the--costs--of--studies--survey--design--
 4 plans--working--drawings--specifications--and--other
 5 activities--essential--to--acquiring--the--equipment--must--be
 6 included--if--the--equipment--is--acquired--for--less--than--fair
 7 market--value--the--term--"cost"--includes--the--fair--market
 8 value. PROVIDED SUCH ACQUISITION WOULD HAVE REQUIRED A
 9 CERTIFICATE OF NEED PURSUANT TO SUBSECTION (1)(A) OR (1)(C)
 10 OF THIS SECTION IF IT HAD BEEN MADE BY OR ON BEHALF OF A
 11 HEALTH CARE FACILITY.

12 (el) the incurring of an obligation for a capital
 13 expenditure by any person to acquire an existing health care
 14 facility if:

15 (i) the person has failed to submit the notice of
 16 intent required by 50-5-302(3); or

17 (ii) the department finds within 30 days after it
 18 receives the notice of intent required by 50-5-302(3) that
 19 the acquisition will result in a change in the services or
 20 bed capacity of the facility;

21 (f) the construction, development, or other
 22 establishment of a health care facility which did not
 23 previously exist or which is being replaced; or

24 (g) the expansion of the geographical service area of
 25 a home health agency.

1 (2) For purposes of this section:

2 (a) "obligation for capital expenditure" does not
 3 include the authorization of bond sales or the offering or
 4 sale of bonds pursuant to the state long-range building
 5 program under Title 17, chapter 5, part 4, and Title 18,
 6 chapter 2, part 1;

7 (b) a health maintenance organization is to be
 8 considered a health care facility except to the extent
 9 exempted from certificate of need requirements as prescribed
 10 in rules adopted by the department.

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

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

1 change requires a certificate of need if one would have been
2 required originally under subsection (1)(e).

3 (5) (a) Expenditure thresholds for certificate of need
4 review are established as follows:

5 (i) For acquisition of equipment, the expenditure
6 threshold is \$500,000.

7 (ii) For construction of health care facilities, the
8 expenditure threshold is \$750,000.

9 (b) The department may by rule establish thresholds
10 higher than those established in subsection (5)(a) if
11 necessary and appropriate to accomplish the objectives of
12 this part."

13 Section 3. Section 50-5-302, MCA, is amended to read:

14 "50-5-302. Application Notice of intent -- application
15 and review process. (1) The department may adopt rules
16 including but not limited to rules for:

17 (a) the form and content of notices of intent and
18 applications;

19 (b) the scheduling and consolidation of reviews of
20 similar proposals;

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

22 (i) does not significantly affect the cost or use of
23 health care;

24 (ii) is necessary to eliminate or prevent imminent
25 safety hazards or to repair or replace a facility damaged or

1 destroyed as a result of fire, storm, civil disturbances, or
2 any act of God;

3 (iii) is necessary to comply with licensure or
4 certification standards; or

5 (iv) has been approved by the legislature pursuant to
6 the long-range building program under Title 17, chapter 5,
7 part 4, and Title 18, chapter 2, part 1, providing the
8 legislative findings accompanying such approval give
9 consideration to the criteria of 50-5-304, and subject to
10 the provisions of (section 9);

11 (d) the format of public informational hearings and
12 reconsideration hearings; and

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds, establishment
15 of new services, expansion of existing services, and
16 replacement of health care facilities.

17 (2) At least 30 days before any person acquires or
18 enters into a contract to acquire an existing health care
19 facility, the person shall submit to the department and the
20 appropriate health systems agency a notice of his intent to
21 acquire the facility and of the services to be offered in
22 the facility and its bed capacity.

23 (3) Any person intending to initiate an activity
24 for which a certificate of need is required shall submit a
25 letter of intent to the department. After receipt the letter

1 of intent must be placed in the appropriate batch, if any.
 2 After expiration of the challenge period following the
 3 batching period in which the letter of intent was submitted
 4 or if no batching is required, after receipt of the letter
 5 of intent, the department shall send the applicant a person
 6 an application form requiring the submission of information
 7 considered necessary by the department to determine if the
 8 proposed activity meets the standards in 50-5-304. The--form
 9 and--content--of-the-notification-of-intent-and-applications
 10 for-certificates-of-need-shall-be-prescribed-by-rule-by--the
 11 department.

12 (2)(4) Within 15 calendar days after receipt of the
 13 application, the department shall determine whether it
 14 contains-sufficient-information-to-determine-if-the-proposed
 15 activity-meets-the-standards-in-50-5-304 is complete. If,
 16 AFTER THE 15 DAYS, the application is found incomplete, the
 17 department shall request the necessary additional
 18 information WITHIN 5 WORKING DAYS. UPON RECEIPT OF THE
 19 ADDITIONAL INFORMATION FROM THE APPLICATION, THE DEPARTMENT
 20 SHALL HAVE 15 DAYS TO DETERMINE IF THE APPLICATION IS
 21 COMPLETE. IF THE DEPARTMENT FAILS TO MAKE A DETERMINATION
 22 AS TO THE COMPLETENESS OF THE APPLICATION WITHIN THE
 23 PRESCRIBED 15-DAY PERIOD, THE APPLICATION SHALL BE DEEMED TO
 24 BE COMPLETE. If the applicant fails to submit the necessary
 25 additional information requested by the department by the

1 deadline as prescribed by department rules for considering
 2 such reviews, a new letter of intent and application must be
 3 submitted and the application will be dropped from the
 4 current batch.

5 (3)(5) After the--applicant--has all applications in
 6 the current batch have been designated complete or, if an
 7 application does not require batching, after it is
 8 designated complete, notification must be sent to the
 9 applicant applicants and all other affected persons
 10 regarding the department's projected time schedule for
 11 review of the application--and--the--review--period--time
 12 schedule applications. The review period for the an
 13 application may be no longer than 90 calendar days after the
 14 notice is sent unless a longer period is agreed to by the
 15 applicant or, if the application has been batched, by all
 16 applicants in the batch. All completed applications
 17 pertaining to similar types of services, facilities, or
 18 equipment affecting the same health service area may be
 19 considered in relation to each other. During the review
 20 period a public hearing may be held if requested by one or
 21 more an affected persons person or when considered
 22 appropriate by the department.

23 (4)(6) The department shall, after considering all
 24 comments received during the review period, issue a
 25 certificate of need, with or without conditions, or reject

1 ~~deny~~ the application. The department shall notify the
 2 applicant and affected persons of its decision within 2
 3 working days after expiration of the review period. IF THE
 4 DEPARTMENT FAILS TO REACH A DECISION AND NOTIFY THE
 5 APPLICANT OF ITS DECISION WITHIN THE DEADLINES ESTABLISHED
 6 IN THIS SECTION AND IF THAT DELAY CONSTITUTES AN ABUSE OF
 7 THE DEPARTMENT'S DISCRETION, THE APPLICANT MAY APPLY TO
 8 DISTRICT COURT FOR A WRIT OF HABEAS CORPUS TO FORCE THE
 9 DEPARTMENT TO RENDER A DECISION."

10 Section 4. Section 50-5-304, MCA, is amended to read:

11 "50-5-304. Review criteria, required findings, and
 12 standards. (1) The department shall by rule promulgate and
 13 utilize, as appropriate, specific criteria for reviewing
 14 certificate of need applications under this chapter,
 15 including but not limited to the following considerations
 16 and required findings:

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

21 (1)(b) the relationship of services reviewed to the
 22 long-range development plan, if any, of the person providing
 23 or proposing the services;

24 (1)(c) the need that the population served or to be
 25 served by the services has for the services;

1 (1)(d) the availability of less costly quality
 2 equivalent or more effective alternative methods of
 3 providing such services;

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

8 (1)(f) the relationship and financial impact of the
 9 services proposed to be provided to the existing health care
 10 system of the area in which such services are proposed to be
 11 provided and the consistency of the proposal with joint
 12 planning efforts by health care providers in the area;

13 (1)(g) the availability of resources, including health
 14 manpower, management personnel, and funds for capital and
 15 operating needs for the provision of services proposed to be
 16 provided and the availability of alternative uses of such
 17 resources for the provision of other health services;

18 (1)(h) the relationship, including the organizational
 19 relationship, of the health services proposed to be provided
 20 to ancillary or support services;

21 (1)(i) the special needs and circumstances of those
 22 entities which provide a substantial portion of their
 23 services or resources, or both, to individuals not residing
 24 in the health service areas in which the entities are
 25 located or in adjacent health service areas. Such entities

1 may include medical and other health profession schools,
2 multidisciplinary clinics, and specialty centers.

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

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

17 ~~(12)(l)~~ In the case of a construction project, the
18 costs and methods of the proposed construction, including
19 the costs and methods of energy provision, and the probable
20 impact of the construction project reviewed on the costs of
21 providing health services by the person proposing the
22 construction project;

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

1 proposal; and

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

6 ~~(21) If an application for new long-term care beds will~~
7 ~~involve new or increased use of medicaid funds and the~~
8 ~~department of social and rehabilitation services determines~~
9 ~~that such use would cause the state medicaid budget for~~
10 ~~long-term care facilities to be exceeded, the department of~~
11 ~~health and environmental sciences may impose conditions on a~~
12 ~~certificate of need for new long-term care beds, including~~
13 ~~limitation on the number of approved beds which may be~~
14 ~~certified for medicaid patients. Availability of medicaid~~
15 ~~funding may be the basis for imposing conditions but may not~~
16 ~~be the sole basis for denial of a certificate of need. THE~~
17 ~~DEPARTMENT MAY ADOPT RULES FOR THE IMPOSITION OF SUCH~~
18 ~~CONDITIONS, BUT ONLY IF THE SECRETARY OF THE UNITED STATES~~
19 ~~DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN~~
20 ~~AMENDMENT TO THE STATE'S MEDICAID PLAN, ADOPTED PURSUANT TO~~
21 ~~42 U.S.C. 1396A, ALLOWING FOR THE IMPOSITION OF SUCH~~
22 ~~CONDITIONS."~~

23 Section 5. Section 50-5-305, MCA, is amended to read:
24 "50-5-305. Period of validity of approved application.
25 * (1) Unless an extension is granted pursuant to subsection

~~(2) a certificate of need shall terminate 1 year after the date of issuance unless expire:~~

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

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

~~(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) 1 year from the estimated time for completion as shown in the application if the approved project is not complete; or~~

~~(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.~~

~~(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 rules.~~

~~(3) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 90-day period after being granted a certificate of need until completion of the project for which the certificate of need was issued."~~

Section 6. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. (1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act An affected person may request and shall be granted a public hearing before the department to hold a public hearing and to reconsider its decision if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 20 calendar days after the initial decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 20 calendar days after its request. The department shall make its final decision and written

findings of fact and conclusions of law in support thereof within 45 30 days after the conclusion of the reconsideration hearing. ~~The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.~~

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

(3) ~~The scope of the hearing before the board is limited to a review of the record upon which the department made its decision must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act. The board upon request of any party to an~~

~~appeal before the board shall hear oral arguments and receive written briefs.~~ Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, ~~reverse, or~~ modify the department's decision or remand it for further proceedings. ~~The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

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

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

Section 7. Section 50-5-308, MCA, is amended to read:

"50-5-308. 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 only the replacement of the previously existing facility or portion thereof. The department shall issue a certificate of need for a proposed capital expenditure if:~~

~~(1) the capital expenditure is required to eliminate~~

1 ~~or prevent imminent safety hazards as defined by federal,~~
 2 ~~state, or local fire, building, or life safety codes or~~
 3 ~~regulations or to comply with state licensure,~~
 4 ~~certification, or accreditation standards; and~~

5 ~~(2) the department has determined that the facility or~~
 6 ~~service for which the capital expenditure is proposed is~~
 7 ~~needed and that the obligation of the capital expenditure is~~
 8 ~~consistent with the state health plan."~~

9 **NEW SECTION.** Section 8. Report and recommendations to
 10 legislature on medicaid funding. (1) At the commencement of
 11 each legislative session, the department of social and
 12 rehabilitation services shall submit a report to the
 13 legislature concerning medicaid funding for the next
 14 biennium. This report must include at least the following
 15 elements:

16 (a) analysis of past and present funding levels for
 17 the various categories and types of health services eligible
 18 for medicaid reimbursement;

19 (b) projected increased medicaid funding needs for the
 20 next biennium. These projections shall identify the effects
 21 of projected population growth and demographic patterns on
 22 at least the following elements:

23 (i) trends in unit costs for services, including
 24 inflation;

25 (ii) trends in use of services;

1 (iii) trends in medicaid recipient levels; and

2 (iv) the effects of new and projected facilities and
 3 services for which a need has been identified in the state
 4 health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

5 (2) In addition to the report, the department of
 6 social and rehabilitation services shall present a
 7 recommendation of funding levels for the medicaid program.
 8 The recommendation need not be consistent with the state
 9 health plan.

10 (3) In arriving at the projections and recommendation
 11 required in subsections (1) and (2), the department of
 12 social and rehabilitation services shall consult with the
 13 department of health and environmental sciences.

14 (4) In making its appropriations for medicaid funding,
 15 the legislature shall specify the portions of medicaid
 16 funding anticipated to be allocated to specific categories
 17 and types of health care services.

18 **NEW SECTION.** Section 9. Exemptions from certificate
 19 of need review. (1) Except as provided in subsection (2),
 20 the following are exempt from certificate of need review:

21 (a) expenditures by a health care facility for
 22 nonmedical and nonclinical facilities and services unrelated
 23 to the operation of the health care facility if a letter of
 24 intent is submitted pursuant to 50-5-302 at least 30 days
 25 prior to incurring an obligation for capital expenditures to

enable the department to determine whether the expenditures are exempt;

(b) a project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(2) If the secretary of the United States department of health and human services notifies the state that the sanctions provided by section 1521 of the Public Health Service Act and all acts amendatory thereto or any other federal statute for noncompliance with federal certificate of need requirements are to be imposed, the department may by rule require certificate of need review for projects exempted by subsection (1) that are otherwise subject to the provisions of this part. Any rule adopted by the department under this subsection is effective only until the 10th day of the next regular legislative session following the adoption of the rule.

NEW SECTION. Section 10. Codification instructions.

(1) Section 8 is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to section 8.

(2) Section 9 is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, apply to section 9.

NEW SECTION. Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 13. Effective date DATES. (1) This act is effective on passage and approval, WITH DELAYED EFFECTIVE DATES.

(2) ON JULY 1, 1987, 50-5-301, 50-5-302, AND 50-5-304 THROUGH 50-5-308, MCA, AND SECTIONS 8 THROUGH 10 HEREOF ARE REPEALED UNLESS REENACTED BY THE LEGISLATURE.

(3) ON JULY 1, 1987, 50-5-101, MCA, IS AMENDED BY DELETING SUBSECTIONS (3), (5), (6), (8), (9), (10), (11), (14), AND (27) UNLESS REENACTED BY THE LEGISLATURE.

(4) ON JULY 1, 1987, 50-5-106, MCA, IS AMENDED TO READ AS FOLLOWS, UNLESS REENACTED BY THE LEGISLATURE:

"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care

1 facility shall submit an annual report for the preceding
2 calendar year to the department. The report shall be on
3 forms and contain information specified by the department.
4 Information received by the department or board through
5 reports, inspections, or provisions of parts 1 and 2 may not
6 be disclosed in a way which would identify patients. A
7 department employee who discloses information which would
8 identify a patient shall be dismissed from employment and
9 subject to the provision of 45-7-401, unless the disclosure
10 was authorized in writing by the patient, his guardian, or
11 his agent. Information and statistical reports from health
12 care facilities which are considered necessary by the
13 department for health planning and resource development
14 activities will be made available to the public and the
15 health planning agencies within the state. ~~Applications by~~
16 ~~health-care-facilities-for--certificates--of--need--and--any~~
17 ~~information--relevant--to--review--of--these--applications,~~
18 ~~pursuant-to-part-37-shall-be-accessible-to-the-public."~~

-End-

SENATE BILL NO. 293

INTRODUCED BY HAGER, WINSLOW, MANUEL

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES AND

THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND DELAYED EFFECTIVE DATES.~~"

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 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

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

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care

facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, ~~third-party payers who reimburse health care facilities in the area affected by the proposal,~~ and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

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

~~(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state as established by department rule, that are accumulated during a single batching period.~~

~~(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.~~

~~(5+11) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

1 (8) "Capital expenditure" means an expenditure made by
 2 or on behalf of a health care facility that, under generally
 3 accepted accounting principles, is not properly chargeable
 4 as an expense of operation and maintenance.

5 (6)(9) "Certificate of need" means a written
 6 authorization by the department for a person to proceed with
 7 a proposal subject to 50-5-301.

8 (10) "Challenge period" means a period, not exceeding 1
 9 month, established by department rule during which any
 10 person may apply for comparative review with an applicant
 11 whose letter of intent has been received during the
 12 preceding batching period.

13 (7)(11) "Clinical laboratory" means a facility for the
 14 microbiological, serological, chemical, hematological,
 15 radioassay, cytological, immuno-hematological,
 16 pathological, or other examination of materials derived from
 17 the human body for the purpose of providing information for
 18 the diagnosis, prevention, or treatment of any disease or
 19 assessment of a medical condition.

20 (8)(12) "College of American pathologists" means the
 21 organization nationally recognized by that name with
 22 headquarters in Traverse City, Michigan, that surveys
 23 clinical laboratories upon their requests and accredits
 24 clinical laboratories that it finds meet its standards and
 25 requirements.

1 (13) "Comparative review" means a joint review of two
 2 or more certificate of need applications within a given
 3 batch which are determined by the department to be
 4 competitive in that the granting of a certificate of need to
 5 one of the applicants would substantially prejudice the
 6 department's review of the other applications.

7 (9)(14) "Construction" means the physical erection of a
 8 health care facility and any stage thereof, including ground
 9 breaking, or remodeling, replacement, or renovation of an
 10 existing health care facility.

11 (10)(15) "Department" means the department of health
 12 and environmental sciences provided for in Title 2, chapter
 13 15, part 21.

14 (11)(16) "Federal acts" means federal statutes for the
 15 construction of health care facilities.

16 (12)(17) "Governmental unit" means the state, a state
 17 agency, a county, municipality, or political subdivision of
 18 the state, or an agency of a political subdivision.

19 (13)(18) "Health care facility" or "facility" means
 20 any institution, building, or agency or portion thereof,
 21 private or public, excluding federal facilities, whether
 22 organized for profit or not, used, operated, or designed to
 23 provide health services, medical treatment, or nursing,
 24 rehabilitative, or preventive care to any person or persons.
 25 The term does not include offices of private physicians or

dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

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

~~(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 3001-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 3001-2a.~~

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

(16)(12) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of

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

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

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

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

(18)(12) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

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

1 ~~(20)(26)~~ (a) "Long-term care facility" means a facility
 2 or part thereof which provides skilled nursing care or
 3 intermediate nursing care to a total of two or more persons
 4 or personal care to more than three persons who are not
 5 related to the owner or administrator by blood or marriage,
 6 with these degrees of care defined as follows:

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

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

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

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

23 (21) "Major medical equipment" means a single unit of
 24 medical equipment or a single system of components with
 25 related functions which is used to provide medical or other

1 ~~health services and which costs more than the expenditure~~
 2 ~~thresholds established in or pursuant to 50-5-38(1)(5); the~~
 3 ~~term does not include medical equipment acquired by or on~~
 4 ~~behalf of a clinical laboratory to provide clinical~~
 5 ~~laboratory services if the clinical laboratory is~~
 6 ~~independent of a physician's office or hospital and has been~~
 7 ~~determined under title XVIII of the Social Security Act to~~
 8 ~~meet the requirements of paragraphs (1)(i) and (1)(ii) of section~~
 9 ~~1801(a) of that act.~~

10 ~~(21)(28)~~ "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 ~~(22) "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 donations 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 {e}--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--detention--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 {23}[122] "Nonprofit health care facility" means a
19 health care facility owned or operated by one or more
20 nonprofit corporations or associations.

21 {24}[130] "Observation bed" means a bed occupied for not
22 more than 6 hours by a patient recovering from surgery or
23 other treatment.

24 {25}[131] "Offer" means the holding out by a health care
25 facility that it can provide specific health services.

1 {26}[132] "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 {27}[133] "Patient" means an individual obtaining
8 services, including skilled nursing care, from a health care
9 facility.

10 {28}[134] "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 {29}[135] "Public health center" means a publicly owned
15 facility providing health services, including laboratories,
16 clinics, and administrative offices.

17 {30}[136] "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 {31}[137] "Resident" means a person who is in a

long-term care facility for intermediate or personal care.
 (32) "State plan" means the state medical facility plan
 provided for in part 4.

(38) "State health plan" means the plan prepared by the
 department pursuant to 42 U.S.C. 300e-2(a)(2).

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

"50-5-301. When application certificate of need is
 required. (1) Unless a person has submitted an application
 has been submitted to and for and is the holder of a
 certificate of need granted by the department, no person may
 may not initiate any of the following:

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

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

(a) the incurring of an obligation by or on behalf of
 a health care facility for any capital expenditures other
 than to acquire an existing health care facility that

exceeds the expenditure thresholds established in or
 pursuant to subsection (5). The costs of any studies,
 surveys, designs, plans, working drawings, specifications,
 and other activities (including staff effort and consulting
 and other services) essential to the acquisition,
 improvements, expansion, or replacement of any plant or
 equipment with respect to which an expenditure is made must
 be included in determining if the expenditure exceeds the
 expenditure thresholds.

(b) a change in the bed capacity of a health care
 facility by 10 beds or 10%, whichever is less, in any 2-year
 period through:

(i) an increase or decrease in the total number of
 beds;

(ii) a redistribution of beds among various categories;
 or

(iii) a relocation of beds from one physical facility
 or site to another;

(c) the addition of a health service that is offered
 by or on behalf of a health care facility which was not
 offered by or on behalf of the facility within the 12-month
 period before the month in which the service would be
 offered and which will result in additional annual operating
 and amortization expenses of \$50,000, \$100,000 or more;

(d) the acquisition by any person of major medical

1 equipmentx--to--determining--whether--medical--equipment--costs
 2 were--then--the--expenditure--thresholds--established--in
 3 subsection--151x--the--costs--of--studies--surveys--designs
 4 plans--working--drawings--specifications--and--other
 5 activities--essential--to--acquiring--the--equipment--must--be
 6 includedx-if-the-equipment-is-acquired-for--less--than--fair
 7 market--valuex-the--term--"cost"--includes--the--fair--market
 8 value; PROVIDED SUCH ACQUISITION WOULD HAVE REQUIRED A
 9 CERTIFICATE OF NEED PURSUANT TO SUBSECTION (11)(A) OR (11)(C)
 10 OF THIS SECTION IF IT HAD BEEN MADE BY OR ON BEHALF OF A
 11 HEALTH CARE FACILITY.

12 (e) the incurring of an obligation for a capital
 13 expenditure by any person to acquire an existing health care
 14 facility if:

15 (i) the person has failed to submit the notice of
 16 intent required by 50-5-302(3); or

17 (ii) the department finds within 30 days after it
 18 receives the notice of intent required by 50-5-302(3) that
 19 the acquisition will result in a change in the services or
 20 bed capacity of the facility;

21 (f) the construction, development, or other
 22 establishment of a health care facility which did not
 23 previously exist or which is being replaced; or

24 (g) the expansion of the geographical service area of
 25 a home health agency.

1 (2) For purposes of this section:

2 (a) "obligation for capital expenditure" does not
 3 include the authorization of bond sales or the offering or
 4 sale of bonds pursuant to the state long-range building
 5 program under Title 17, chapter 5, part 4, and Title 18,
 6 chapter 2, part 1;

7 (b) a health maintenance organization is to be
 8 considered a health care facility except to the extent
 9 exempted from certificate of need requirements as prescribed
 10 in rules adopted by the department.

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

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

1 change requires a certificate of need if one would have been
2 required originally under subsection (1)(e).

3 (5) (a) Expenditure thresholds for certificate of need
4 review are established as follows:

5 (i) For acquisition of equipment, the expenditure
6 threshold is \$500,000.

7 (ii) For construction of health care facilities, the
8 expenditure threshold is \$750,000.

9 (b) The department may by rule establish thresholds
10 higher than those established in subsection (5)(a) if
11 necessary and appropriate to accomplish the objectives of
12 this part."

13 Section 3. Section 50-5-302, MCA, is amended to read:
14 "50-5-302. Application Notice of intent -- application
15 and review process. (1) The department may adopt rules
16 including but not limited to rules for:

17 (a) the form and content of notices of intent and
18 applications;

19 (b) the scheduling and consolidation of reviews of
20 similar proposals;

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

22 (i) does not significantly affect the cost or use of
23 health care;

24 (ii) is necessary to eliminate or prevent imminent
25 safety hazards or to repair or replace a facility damaged or

1 destroyed as a result of fire, storm, civil disturbances, or
2 any act of God;

3 (iii) is necessary to comply with licensure or
4 certification standards; or

5 (iv) has been approved by the legislature pursuant to
6 the long-range building program under Title 17, chapter 5,
7 part 4, and Title 18, chapter 2, part 1, providing the
8 legislative findings accompanying such approval give
9 consideration to the criteria of 50-5-304, and subject to
10 the provisions of [section 9];

11 (d) the format of public informational hearings and
12 reconsideration hearings; and

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds, establishment
15 of new services, expansion of existing services, and
16 replacement of health care facilities.

17 (2) At least 30 days before any person acquires or
18 enters into a contract to acquire an existing health care
19 facility, the person shall submit to the department and the
20 appropriate health systems agency a notice of his intent to
21 acquire the facility and of the services to be offered in
22 the facility and its bed capacity.

23 (3) Any person intending to initiate an activity
24 for which a certificate of need is required shall submit a
25 letter of intent to the department. After receipt the letter

1 of intent must be placed in the appropriate batch, if any.
 2 After expiration of the challenge period following the
 3 batching period in which the letter of intent was submitted
 4 or if no batching is required, after receipt of the letter
 5 of intent, the department shall send the applicant a person
 6 an application form requiring the submission of information
 7 considered necessary by the department to determine if the
 8 proposed activity meets the standards in 50-5-304. The form
 9 and content of the notification of intent and applications
 10 for certificates of need shall be prescribed by rule by the
 11 department.

12 (2) Within 15 calendar days after receipt of the
 13 application, the department shall determine whether it
 14 contains sufficient information to determine if the proposed
 15 activity meets the standards in 50-5-304 is complete. If,
 16 AFTER THE 15 DAYS, the application is found incomplete, the
 17 department shall request the necessary additional
 18 information WITHIN 5 WORKING DAYS. UPON RECEIPT OF THE
 19 ADDITIONAL INFORMATION FROM THE APPLICATION, THE DEPARTMENT
 20 SHALL HAVE 15 DAYS TO DETERMINE IF THE APPLICATION IS
 21 COMPLETE. IF THE DEPARTMENT FAILS TO MAKE A DETERMINATION
 22 AS TO THE COMPLETENESS OF THE APPLICATION WITHIN THE
 23 PRESCRIBED 15-DAY PERIOD, THE APPLICATION SHALL BE DEEMED TO
 24 BE COMPLETE. If the applicant fails to submit the necessary
 25 additional information requested by the department by the

1 deadline as prescribed by department rules for considering
 2 such reviews, a new letter of intent and application must be
 3 submitted and the application will be dropped from the
 4 current batch.

5 (3) After the department has all applications in
 6 the current batch have been designated complete or, if an
 7 application does not require batching, after it is
 8 designated complete, notification must be sent to the
 9 applicant applicants and all other affected persons
 10 regarding the department's projected time schedule for
 11 review of the application and the review period time
 12 schedule applications. The review period for the an
 13 application may be no longer than 90 calendar days after the
 14 notice is sent unless a longer period is agreed to by the
 15 applicant or, if the application has been batched, by all
 16 applicants in the batch. All completed applications
 17 pertaining to similar types of services, facilities, or
 18 equipment affecting the same health service area may be
 19 considered in relation to each other. During the review
 20 period a public hearing may be held if requested by one or
 21 more an affected persons person or when considered
 22 appropriate by the department.

23 (4) The department shall, after considering all
 24 comments received during the review period, issue a
 25 certificate of need, with or without conditions, or reject

1 deny the application. The department shall notify the
 2 applicant and affected persons of its decision within 5
 3 working days after expiration of the review period. IF THE
 4 DEPARTMENT FAILS TO REACH A DECISION AND NOTIFY THE
 5 APPLICANT OF ITS DECISION WITHIN THE DEADLINES ESTABLISHED
 6 IN THIS SECTION AND IF THAT DELAY CONSTITUTES AN ABUSE OF
 7 THE DEPARTMENT'S DISCRETION, THE APPLICANT MAY APPLY TO
 8 DISTRICT COURT FOR A WRIT OF HABEAS CORPUS TO FORCE THE
 9 DEPARTMENT TO RENDER A DECISION."

10 Section 4. Section 50-5-304, MCA, is amended to read:

11 "50-5-304. Review criteria, required findings, and
 12 standards. (1) The department shall by rule promulgate and
 13 utilize, as appropriate, specific criteria for reviewing
 14 certificate of need applications under this chapter,
 15 including but not limited to the following considerations
 16 and required findings:

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

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

24 (3)(c) the need that the population served or to be
 25 served by the services has for the services;

1 (4)(d) the availability of less costly quality
 2 equivalent or more effective alternative methods of
 3 providing such services;

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

8 (6)(f) the relationship and financial impact of the
 9 services proposed to be provided to the existing health care
 10 system of the area in which such services are proposed to be
 11 provided and the consistency of the proposal with joint
 12 planning efforts by health care providers in the area;

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

18 (8)(h) the relationship, including the organizational
 19 relationship, of the health services proposed to be provided
 20 to ancillary or support services;

21 (9)(i) the special needs and circumstances of those
 22 entities which provide a substantial portion of their
 23 services or resources, or both, to individuals not residing
 24 in the health service areas in which the entities are
 25 located or in adjacent health service areas. Such entities

1 may include medical and other health profession schools,
2 multidisciplinary clinics, and specialty centers.

3 ~~†††††~~ the special needs and circumstances of health
4 maintenance organizations for which assistance may be
5 provided under Title XIII of the Public Health Service Act.
6 Such needs and circumstances include the needs of and costs
7 to members and projected members of the health maintenance
8 organization in obtaining health services and the potential
9 for a reduction in the use of inpatient care in the
10 community through an extension of preventive health services
11 and the provision of more systematic and comprehensive
12 health services.

13 ~~†††††~~ the special needs and circumstances of
14 biomedical and behavioral research projects which are
15 designed to meet a national need and for which local
16 conditions offer special advantages;

17 ~~†††††~~ in the case of a construction project, the
18 costs and methods of the proposed construction, including
19 the costs and methods of energy provision, and the probable
20 impact of the construction project reviewed on the costs of
21 providing health services by the person proposing the
22 construction project;

23 ~~†††††~~ the distance, convenience, cost of
24 transportation, and accessibility of health services for
25 persons who live outside urban areas in relation to the

1 proposal; and

2 ~~†††††~~ any other criteria, required findings, or
3 requirements for reviewing certificate of need applications
4 cited in the federal regulations found in Title 42, CFR,
5 Part 123, as amended.

6 ~~(2). If an application for new long-term care beds will~~
7 ~~involve new or increased use of medicaid funds and the~~
8 ~~department of social and rehabilitation services determines~~
9 ~~that such use would cause the state medicaid budget for~~
10 ~~long-term care facilities to be exceeded, the department of~~
11 ~~health and environmental sciences may impose conditions on a~~
12 ~~certificate of need for new long-term care beds, including~~
13 ~~limitation on the number of approved beds which may be~~
14 ~~certified for medicaid patients. Availability of medicaid~~
15 ~~funding may be the basis for imposing conditions but may not~~
16 ~~be the sole basis for denial of a certificate of need. THE~~
17 ~~DEPARTMENT MAY ADOPT RULES FOR THE IMPOSITION OF SUCH~~
18 ~~CONDITIONS, BUT ONLY IF THE SECRETARY OF THE UNITED STATES~~
19 ~~DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN~~
20 ~~AMENDMENT TO THE STATE'S MEDICAID PLAN, ADOPTED PURSUANT TO~~
21 ~~42 U.S.C. 1396A, ALLOWING FOR THE IMPOSITION OF SUCH~~
22 ~~CONDITIONS."~~

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

24 "50-5-305. Period of validity of approved application.

25 * ~~(1) Unless an extension is granted pursuant to subsection~~

(2) a certificate of need shall terminate 1 year after the date of issuance unless expire:

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

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

(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) 1 year from the estimated time for completion as shown in the application if the approved project is not completed or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(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 rules.

(3) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 90-day period after being granted a certificate of need until completion of the project for which the certificate of need was issued."

Section 6. Section 50-5-306, MCA, is amended to read:

"50-5-306. Right to hearing and appeal. (1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act An affected person may request and shall be granted a public hearing before the department to hold a public hearing and to reconsider its decision if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 20 calendar days after the initial decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 20 calendar days after its request. The department shall make its final decision and written

findings of fact and conclusions of law in support thereof within 45 30 days after the conclusion of the reconsideration hearing. ~~The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.~~

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

(3) ~~The scope of the hearing before the board is limited to a review of the record upon which the department made its decision must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act. The hearing upon request of any party to an~~

~~appeal before the board shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, reverse, or modify the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.~~

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

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

Section 7. Section 50-5-308, MCA, is amended to read:

"50-5-308. 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. The department shall issue a certificate of need for a proposed capital expenditure if:~~

~~(1) the capital expenditure is required to eliminate~~

~~or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and~~

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

NEW SECTION. Section 8. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) In addition to the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

NEW SECTION. Section 9. Exemptions from certificate of need review. (1) Except as provided in subsection (2), the following are exempt from certificate of need review:

(a) expenditures by a health care facility for nonmedical and nonclinical facilities and services unrelated to the operation of the health care facility if a letter of intent is submitted pursuant to 50-5-302 at least 30 days prior to incurring an obligation for capital expenditures to

enable the department to determine whether the expenditures are exempt;

(b) a project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(2) If the secretary of the United States department of health and human services notifies the state that the sanctions provided by section 1521 of the Public Health Service Act and all acts amendatory thereto or any other federal statute for noncompliance with federal certificate of need requirements are to be imposed, the department may by rule require certificate of need review for projects exempted by subsection (1) that are otherwise subject to the provisions of this part. Any rule adopted by the department under this subsection is effective only until the 10th day of the next regular legislative session following the adoption of the rule.

NEW SECTION. Section 10. Codification Instructions.

(1) Section 8 is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to section 8.

(2) Section 9 is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, apply to section 9.

NEW SECTION. Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 13. Effective date DATES. (1) This act is effective on passage and approval, ~~WITH DELAYED EFFECTIVE DATES.~~

~~(2) ON JULY 1, 1987, 50-5-301, 50-5-302, AND 50-5-304 THROUGH 50-5-308, MCA, AND SECTIONS 8 THROUGH 10 HEREOF ARE REPEALED UNLESS REENACTED BY THE LEGISLATURE.~~

~~(3) ON JULY 1, 1987, 50-5-101, MCA, IS AMENDED BY DELETING SUBSECTIONS (3), (5), (6), (8), (9), (10), (13), (14), AND (27) UNLESS REENACTED BY THE LEGISLATURE.~~

~~(4) ON JULY 1, 1987, 50-5-106, MCA, IS AMENDED TO READ AS FOLLOWS, UNLESS REENACTED BY THE LEGISLATURE:~~

~~"50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care~~

1 facility shall submit an annual report for the preceding
 2 calendar year to the department. The report shall be on
 3 forms and contain information specified by the department.
 4 Information received by the department or board through
 5 reports, inspections, or provisions of parts 1 and 2 may not
 6 be disclosed in a way which would identify patients. A
 7 department employee who discloses information which would
 8 identify a patient shall be dismissed from employment and
 9 subject to the provision of 45-7-401, unless the disclosure
 10 was authorized in writing by the patient, his guardian, or
 11 his agent. Information and statistical reports from health
 12 care facilities which are considered necessary by the
 13 department for health planning and resource development
 14 activities will be made available to the public and the
 15 health planning agencies within the state. ~~Applications by~~
 16 ~~health care facilities for certificates of need and any~~
 17 ~~information relevant to review of these applications,~~
 18 ~~pursuant to part 3, shall be accessible to the public."~~

-End-