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

IN TI	ne benate
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 TI	HE 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 TH	HE SENATE

March 21, 1983 Returned to Senate. Sent to enrolling.

Reported correctly enrolled.

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INTRODUCED BY Hagen Wools 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."

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13 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.

- 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.
 - (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 way
 be accumulated pending further processing of all letters of
 intent within the batch.
- 23 (5)(1) "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

1 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.

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- 4 161121 "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.
 - t77(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobicassay. cytological. immunohematological. 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 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
- 2 batch which are determined by the department to be
- 3 competitive in that the granting of a certificate of need to
- 4 one of the applicants would substantially prejudice the
- department's review of the other applications.
- (9)(14) "Construction" means the physical erection of a
- 7 health care facility and any stage thereof, including ground
- breaking, or remodeling, replacement, or removation of an
- existing health care facility.
- 10 (19)(15) "Department" means the department of health
- 11 and environmental sciences provided for in Title 2, chapter
- 12 15, part 21.
- 13 +1++(16) "Federal acts" means federal statutes for the
- construction of health care facilities. 14
- 15 f121(17) "Governmental unit" means the state, a state
- 16 agency, a county, municipality, or political subdivision of
- 17 the state, or an agency of a political subdivision.
- 18 †131(18) "Health care facility" or "facility" means
- 19 any institution, building, or agency or portion thereof,
- 20 private or public, excluding federal facilities, whether
- 21 organized for profit or not, used, operated, or designed to
- 22 provide health services, medical treatment, or nursing,
- 23 rehabilitative, or preventive care to any person or persons.
- The term does not include offices of private physicians or 24
- 25 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.

6 (14)(19) "Health maintenance organization" means a
7 public or private organization organized as defined in 42
8 U.S.C. 300e as amended.

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(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.

tibit(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.

table21 "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.

9 (177)(23) "Infirmary" means a facility located in a
10 university, college, government institution, or industry for
11 the treatment of the sick or injured, with the following
12 subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—8" provides outpatient care only.

16 (18)(24) "Joint commission on accreditation of
17 hospitals" means the organization nationally recognized by
18 that name with headquarters in Chicago, Illinois, that
19 surveys health care facilities upon their requests and
20 grants accredidation status to any health care facility that
21 it finds meets its standards and requirements.

22 (19)(25) "Kidney treatment center" means a facility
23 which specializes in treatment of kidney diseases, including
24 freestanding hemodialysis units.

25 (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.
- 127) "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

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 little 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	to;theconstructionydevelopmentyorother
16	establishment-ofahealthcarefacilitywhichdidnot
17	previously-exist;
18	tb)anyexpenditureby-or-on-behalf-of-o-heolth-core
19	facility within a-12-month-period-in excess-of-4150v000v
20	which, under generally accepted accounting principles
21	consistently-applied, is-a copital expenditure. Whenever
22	health-care facility-or-a-person-on-behalf-of-a-health-care
23	facility-makes-anacquisitionunderleaseorcomparable

arrangement—or—through-danationy-which-would-have-required

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acquisitionshallbeconsideredacapitalexp	end<i>i</i> ture
subject-to-reviews	

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(e)--a-change-in-bed-capacity-of-a-health-care-facility
which-increases-or--decreases--the--total--number--of--bedsy
redistributes--beds--among--various--service--categoriesy-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-capacityy-whichever-is-less:

(d)-health-services-which-ser-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 l2-month-period-prior-to-the-time-such-services-would-be offered-or-the-deletion-by-o-health-care-facility-of-service-previously-offered:

te) -- the -expansion - of -a -geographic - service -- area -- of --a home - health - ogency =

t23)[22] "Nonprofit health care facility" means a
health care facility owned or operated by one or more
nonprofit corporations or associations.

#247(30) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

f25)(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.

6 t277(33) "Patient" means an individual obtaining
7 services, including skilled nursing care, from a health care
8 facility.

t20f(34) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

13 (29)(35) "Public health center" means a publicly owned
14 facility providing health services, including laboratories,
15 clinics, and administrative offices.

16 (30) (36) "Rehabilitation facility" means a facility 17 which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing 19 comprehensive medical evaluations and services, 20 psychological and social services, or vocational evaluation 21 and training or any combination of these services and in 22 which the major portion of the services is furnished within 23 the facility.

24 (31) "Resident" means a person who is in a 25 long-term care facility for intermediate or personal care.

2	provided-for-in-part-fu
3	(38) "State health plan" means the plan prepared by the
4	department pursuant to 42 U.S.C. 300m-2(a)(2)."
5	Section 2. Section 50-5-301, MCA, is amended to read:
6	#50-5-301. When application <u>certificate</u> of <u>need</u> 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
to	may not initiate any of the following:
11	(l)a-new-institutional-health-service-asdefinedi n
12	50-5-101+
13	(2)anyexpenditureby-or-on-behalf-of-a-health-car e
4	facility-in-excess-of-\$150y000-made-in-preparationforthe
15	offeringordevelopmentofanewinstitutionalhealth
6	service-and-any-arrangement-or-commitment-made-for-financing
17	the-offering-or-development-of-the-new-institutionalhealth
.8	serviceExpendituresmadeinthepreparationforthe
.9	offering-of-s-new-institutional-health-service-shall-include
20	expenditures-for-architecturol-designs,preliminaryplansy
21	working-drawingsy-specificationsy-studiesy-and-surveys:
22	(a) the incurring of an obligation by or on behalf of
23	a health care facility for any capital expenditure, other
4	than to acquire an existing health care facility, that
5	exceeds the expenditure thresholds established in or

t32)-#State-plan*-means-the-state-medical-facility-plan

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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 expanditure 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:
1 5	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
L 9	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 150,000 or more:
24	(d) the acquisition by any person of major medical
25	equipment. In determining whether medical equipment costs

1	more than the expenditure thresholds established in
2	subsection (5): the costs of studies: surveys: designs:
3	plans, working drawings, specifications, and other
4	activities essential to acquiring the equipment must be
5 .	included. If the equipment is acquired for less than fair
6	market value, the term "cost" includes the fair market
7	e sultex
8	(e) the incurring of an obligation for a capital
9	expenditure by any person to acquire an existing health care
10	facility_if:
11	(i) the person has failed to submit the notice of
12	intent required by 50-5-302(31; or
13	(ii) the department finds within 30 days after it
14	receives the notice of intent required by 50-5-302(3) that
15	the acquisition will result in a change in the services or
16	bed_capacity_of_the_facility:
17	(f) the construction, development, or other
18	establishment of a health care facility which did not
19	previously exist or which is being replaced; or
20	(g) the expansion of the geographical service area of
21	a home health agency.
22	(2) For purposes of this section:
23	(a) "obligation for capital expenditure" does not
24	include the authorization of bond sales or the offering or
25	sale of bonds pursuant to the state long-range building

1	program under little 1/s chapter 5, part 4, and little 18,
2	chapter 2. part 1:
3	(b) a health maintenance organization is to be
4	considered a health care facility except to the extent
5	exempted from certificate of need requirements as prescribed
6	in rules adopted by the department.
7	(3) A proposed change in a project associated with a
8	capital expenditure under subsections (1)(a) or (1)(b) for
9	which the department has previously issued a certificate of
10	need requires subsequent certificate of need review if the
11	change is proposed within 1 year after the date the activity
12	for which the capital expenditure was granted a certificate
13	of need is undertaken. As used in this subsection, a "change
L 4	in project" includes but is not limited to any change in the
15	bed capacity of a health care facility as described in
16	subsection (1)(b) and the addition or termination of a
17	health care service.
8.1	[4] If a person acquires an existing health care
19	facility without a certificate of need and proposes to
20	change, within I year after the acquisition, the services or
21	bed capacity of the health care facility: the proposed
22	change requires a certificate of need if one would have been
23	required originally under subsection (1)(e).
24	(5) (a) Expenditure thresholds for certificate of need
25	review are established as follows:

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1	(i) For acquisition of equipment, the expenditure
2	threshold_is_s500=000=
3	(ii) For construction of health care facilities, the
4	expanditure 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	 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	cartification standards, or

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 bearings; 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	12) 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	(1)(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. *** *** *** The letter
22	of intent must be placed in the appropriate batche if anye
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

fiv) has been approved by the legislature pursuant to

the long-range building program under Title 17. chapter 5.

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.

the department shall determine whether it contains sufficient information to 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 opplication 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 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 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 person or when considered appropriate by the department.

(+)(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. (11) 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:

25 (t)(a) the relationship of the health services peing

reviewed to the applicable health systems plans state health

plans and annual implementation plan developed pursuant to

Title XV of the Public Health Service Acts as amended:

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

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

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

feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

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

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

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

tentities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

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

the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages:

25 (12)(1) 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
i	impact of the construction project reviewed on the costs of
	providing health services by the person proposing the
	construction project;

transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

titical 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.

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 heds, 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:

ı	■50-5-305. Period of validity of approved application.
2	* (II Unless an extension is granted pursuant to subsection
3	121: a certificate of need shall terminate 1-year after the
4	data-of-fasuonee-unless expire:
5	(1)theapplicanthascommuniced-construction-if-the
6	project-provides-for-construction-or-has-incurredor
7	enforceablecapital-expenditure-commitment-for-projects-not
8	involving-constructions-or
9	(2)thecertificateofneedvalidityperiodis
10	extendedbythedepartment-for-one-additional-period-of-6
11	months,-upon-showing-good-cause-bytheapplicantforthe
12	extens*on*
13	(a) 1 year after its issuance if the applicant has not
14	commenced construction on a project requiring construction
15	or has not incurred an enforceable capital expenditure
16	commitment for a project not requiring construction:
17	(b) 1 year from the estimated time for completion as
18	shown in the application if the approved project is not
19	complete; or
20	(c) when the department determines, after opportunity
21	for a hearing, that the holder of the certificate of need
22	has violated the provisions of this chapter, rules adopted
23	hereunder, or the terms of the certificate of need.

apply to the department to extend the term of the

12) The holder of an unexpired certificate of need may

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 decisiony if the request-is received by the department within 30-calendar days-after-the decision-is-announceds-kny other--affected--person--mayy--for--good--cousey-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 <u>initial</u> 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.

- 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-boardy-upon-request-of-any-party-to-on
appear-before-the-boardy-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, reverses or
$\underline{\text{modify}}$ the department's decision or remand 'it $\mathcal{F}\text{for}$ 'further
proceedings. The board may reverse or modify the
department*s-decision-if-the-appallant*s-rights-have-been
prejudiced for any-of-the reasons found-in-2-4-701:

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- (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-firey-stormy-civil-disturbancey-or-any-act-of-Gody

 the-department-may-issue-a-certificate-of-need-for-only-tne
 replacement-of-the-previously-existing-facility-or-portion
 thereofy The department shall issue a certificate of need

for a proposed capital expenditure if:

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- 2 (1) the capital expenditure is required to eliminate
 3 or prevent imminent safety hazards as defined by federal:
 4 state: or local fire: building: or life safety codes or
 5 regulations or to comply with state licensure:
 6 certification: or accreditation standards: and
- 7 (2) the department has determined that the facility or
 8 service for which the capital expenditure is proposed is
 9 needed and that the obligation of the capital expenditure is
 10 consistent with the state health plan.**
 - NEW SECTION. Section 8. Report and recommendations to legislature on medicald funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicald 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 medical dreimbursement;
- 21 (b) projected increased medicaid funding needs for the 22 next biennium. These projections shall identify the effects 23 of projected population growth and demographic patterns on 24 at least the following elements:
- 25 (i) trends in unit costs for services, including

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inflation:

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- (ii) trends in use of services;
- 3 (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:
- 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

- 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;
- 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.
 - (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.
- 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.
- NEW SECTION. Section 11. Severability. If a part of
 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
- 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 <u>NEW SECTION.</u> 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-

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Approved by Committee on Public Health, Welfare & Safety

1	SENATE BILL NO. 293
2	INTRODUCED BY HAGER, WINSLOW, HANUEL
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 _EEEECILYE
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

- 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.
- 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) "Eatch" means those letters of intent and
 15 applications of a specified category and within a specified
 16 region of the states as established by department rule, that
 17 are accumulated during a single batching periods
- months_established_by_department_rule_during_which_letters

 of_intent_for_specified_categories_of_new_institutional

 bealth_services_and_for_specified_regions_of_the_state_may

 be_accumulated_pending_further_processing_of_all_letters_of

161 "Batching period" means a period, not exceeding 1

- 23 intent_within_the_batch.
- 24 t5†171 "Board" means the board of health and 25 environmental sciences, provided for in 2-15-2104.

[81 "Capital expenditure" means an expenditure made by
or_on_behalf_of_a_bealth_care_facility_thats_under_generally
accepted_accounting_principlesis_notproperlychargeable
as an expense of operation and maintenance.

(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*

t7†(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiopioassay, cytological, immunohematological, 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.

t8)(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.

Ł	(13) "Comparative review" means a joint review of two
2	or_more_certificate_of_need_applications_within_a_given
3	batchwhichare_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 (18)(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.

(+2)1171 "Governmental unit" means the state, a state
agency, a county, municipality, or political subdivision of
the state, or an agency of a political subdivision.

tiff(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

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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.

(±47<u>[19]</u> "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 bealth and buman services. of performing each of the functions described in 42 U.S.C. 3001-2.

tiff(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.

ti6;1221 **Hospital* means a facility providing, by or
under the supervision of licensed physicians, services for
medical diagnosis, treatment, rehabilitation, and care of

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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

10 (17)(23) "Infirmary" means a facility located in a
11 university, college, government institution, or industry for
12 the treatment of the sick or injured, with the following
13 subdefinitions:

retarded, and tubercular patients.

- 14 (a) an Minfirmary--AM provides outpatient and 15 inpatient care;
- 23 ft971251 "Kidney treatment center" means a facility
 24 which specializes in treatment of kidney diseases, including
 25 freestanding hemodialysis units.

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t20/1261 (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.
- [21]_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

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health_services and=:which:costs=more=thoo:the=exactditute
thresholds:established-in-or:pursuantto50:5:30lt5lx::Thr
termindoesimosimiosiudeimedisaliequipmentiosquiredibyiorion
behalfofor-clinicallaboratorytoprovideclinical
loboretorx:::aecxicea:::if:::tbe:::clinicol:::laboratorx::ia
independent:of:a:chysicianAs:office:oc:hospital:sod:hos:bren
determined-under-fitte-XVIII-of-the-Social-SecurityActto
meet=the=requirements=of=paragraphs=fl0t=and=fl1t=of=acction
16úlfsl-of-theirscie

tatt(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"-meanst

(a)--the---constructiony----developmenty-----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--i2-month--period-in-excess-of-\$150,000, which--under--qenerally--accepted---accounting---principles consistently--applied-is-a-capital-expenditure--whenever--nhealth-care-facility-or-a-person-on-behalf-of-a-health--care facility-makes--an--acquisition--under--lease-or-comparable arrangement-or-through-donation--which-wauld--have--required

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

tet--e-change-in-bed-capacity-af-a-health-care-facility
which--increases--or--decreases--the--total--number-of-bedsy
redistributes-beds--among--various--service--categoriesy--or
relocates--such--beds--from-one-physical-facility-or-site-to
another-over-a-2-year-pariod-by-more-than-10-beds-or-10%--of
the-total-ticensed-bed-capacity-whichever-is-lessi

tdy--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
t2-month--period--prior--to--the-time-such-services-would-be
offered-or-the-deletion-by--a--health--care--facility--of--a
service-previously-offereds

{e}--the--expansion--of--a-geographic-service-area-of-a
home-health-agency*

te37(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

#2571311 "Offer" means the holding out by a health care facility that it can provide specific health services.

1 <u>f26)(32)</u> "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 t27t1231 "Patient" means an individual obtaining 8 services, including skilled nursing care, from a health care 9 facility.

tabilizing Person means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

facility providing health services, including laboratories, clinics, and administrative offices.

(30)1361 "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.

25 t3t)[1] "Resident" means a person who is in

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1	long-term care facility for intermediate or personal care.
2	†32)-"State-plan"-means-the-state-medical-facility-plan
3	provided-for-in-part-4*
4	(38) "State bealth plan" means the plan prepared by the
5	department_pursuant_to_42_VaSaCa_300m-2(a)(2)a"
6	Section 2. Section 50-5-301, MCA, is amended to read:
7	*50-5-301. When application certificate of need is
8	required. (1) Unless a <u>person has submitted</u> an application
9	hasbeensubmittedtoand for and is the holder of a
10	certificate of need granted by the department, no-person be
11	may nat initiate any of the following:
12	fit
13	50-5-1014
14	t2}any-expenditure-by-or-on-behalf-of-ahealthcare
15	facitityinexcess-of-\$150y000-made-in-preparation-for-the
16	offeringordevelopmentofenewinstitutionalhealth
17	service-and-any-arrangement-or-commitment-made-for-financing
18	theoffering-or-development-of-the-new-institutional-health
19	serviceExpendituresmadeinthepreparationforthe
20	offering-of-e-new-institutional-health-service-shall-include
21	expendituresforarchitectural-designsy-preliminary-plansy
22	working-drawingsy-specificationsy-studiesy-and-surveysy
23	(al_the incurring of an obligation by or on behalf of
24	a_health_care_facility_for_any_capital_expenditure.other
25	than to acquire an existing health care facility, that

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1	exceeds the expenditure thresholds established in o
2	pursuant to subsection (5). The costs of any studies
3	surveysdesignsplansworking_drawingsspecifications
4	and other activities lincluding staff effort and consulting
5	and other services) essential to the acquisition
6	improvement, expansion, or replacement of any plant_o
7	equipment_with_respect_to_which_an_expenditure_is_made_mus
8	be_included_in_determining_if_the_expenditure_exceeds_th
9	expanditure_thresholds.
10	(b) a change in the bed capacity of a bealth car
11	facility_by_10_beds_or_10%. whichever_is_less.in_any_2=yea
12	period_through:
13	(il_an_increase_or_decrease_in_the_total_number_o
14	bedsi
15	<pre>tiil_a_redistribution_of_beds_among_vacious_categories</pre>
16	Qr.
17	filit_a_relocation_of_beds_from_one_pbysical_facilit
18	or_site_to_another:
19	(c)_the_addition_of_a_bealth_service_that_is_offere
20	by_or_ou_behalf_of_a_bealth_care_facility_which_was_oo
21	offered_by_or_on_behalf_of_the_facility_within_the_12-mont
22	period_before_the_month_in_which_the_service_would_b
23	offered and which will result in additional annual operation
24	and_awortization_expenses_of_#58x888 \$100x000 or_more:

(d) the acquisition by any person of major medical

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1	equipment==in==determining==whathac=aqdical=aquipment=costs
2	werethentheexpenditurethresholdsestablishedto
3	aubacction==#5?x==the==coata==of==atudicax=aucxeyax=deaignax
4	płanarzzzworkingzzzdenwingarzzzapecificationarzzzondzzzother
5	octivities==essential==to==ocquiring==the==equipment=must=be
6	inglydedx=lf=the=equipment=ia=acquicad=for==leaa==thao==foir
7	worket == yaluex == the == term == "cost" == ineludes == the =fair = market
8	retue: PROVIDED SUCH ACQUISITION WOULD HAVE REQUIRED A
9	CERTIFICATE _OF_NEED_PURSUANT_IQ_SUBSECTION_(1)(A)_OR_(1)(C)
10	DE IHIS SECTION IE IT HAD BEEN MADE BY OR ON BEHALE DE A
11	HEALIH_CARE_EACILIIY.
12	<u> (el_the_incurring_of_an_obligation_for_a_capital</u>
13	expenditure_by_any_person_to_acquire_an_existing_bealth_care
14	facility_if:
15	(i) the person has failed to submit the notice of
16	intent_required_by_50=5=302131:_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_tbe_facility:
21	(f)_theconstructiondevelopmentorother
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.

2	[al_mobligation_for_capital_expenditurem_does_not
3	include the authorization of bond sales or the offering or
4	sale_of_bonds_purswant_to_the_state_long=range_building
5	program under Title 17. chapter 5. part 4. and Title 18.
6	chapter_2.part_li
7	<pre>{bl_a_healthmaintenance_organization_is_to_be</pre>
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_iftbe
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_undertakenAs_used_lo_this_subsectiona_"change
18	in project" includes but is not limited to any change in the
19	bed_capacity_of_a_health_care_facility_as_described_io
20	subsection_{111(b)_and_the_addition_or_termination_of_a
21	health_care_service.
22	141_If_a_persooacquiresaoexistiogbealtbcare
23	facility_without_a_certificate_of_need_and_proposes_to
24	change . within I year after the acquisition . the services or

bed_capacity_of_the_bealth_care_facility:_the_proposed

(2) For purposes of this section:

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1	change requires a certificate of need if one would have been
2	required_originally_under_subsection_(1)(el.
3	151_fal_Expenditure_thresholds_for_certificate_of_need
4	rayiew_are_established_as_follows:
5	(i)_For_acquisition_of_equipmentthe_expenditure
6	threshold_is_£500:000.
7	(ii)_Eor_construction_of_health_care_facilitiesthe
8	expenditure_threshold_is_\$150.000.
9	1bl 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. (11 The department may adopt rules
16	including but not limited to rules for:
17	lal_the_form_and_content_of_notices_of_intent_and
18	applications:
19	(b)_the_scheduling_and_consolidation_of_reviews_of
20	similar_proposals:
21	<pre>tcl_the_abbrevlated_review_of_a_proposal_that;</pre>
22	(il_does_not_significantly_affect_the_cost_or_use_of
23	health_care:
24	<pre>fillis_occessary_to_eliminate_or_preyent imminent</pre>
25	safety_bazards_or_to_repair_or_replace_a_facility_damaged_or

1	destroyed_as_a_result_of_fires_storms_civil_disturbancesor
2	any_act_of_God:
3	(iiil_isnecessarytocomply_with_licensure_or
4	certification_standardsi_or
5	(ix)_bas_been_approved_by_the_legislaturepursuantto
6	the_long=range_building_program_under_Title_17:_chapter_5:
7	part 4: and little 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_bearings:_and
13	(el_the_establishment_of_batching_periods_for
14	certificate_of_need_applications_for_new_bedsestablishment
15	ofoew_services: expansion==of==existins==services: and
16	replacement of health care facilities.
17	121_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	<pre></pre>
24	for which a certificate of need is required shall submit a
25	letter of intent to the department. After-receipt The letter

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1	of intent must be placed in the appropriate batch. if anys
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	ofijteni, the department shall send the opplicant-a person
6	an_apalication 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. Theform
9	andcontentof-the-motification-of-intent-and-application:
10	for-certificates-of-need-shall-be-prescribed-by-rule-bythe
11	deportments

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terition, 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, AFIER_IHE_15_PAYS: the application is found incomplete, the department shall request the necessary additional information HIHIN_5_MORKING_DAYS. UPON_RECEIPT_QE_IHE ADUITIONAL_INEORMATION_EROM_IHE_APPLICATION: IHE_DEPARTMENT SHALL_HAVE_15_DAYS_IO_DETERMINE_IE_IHE_APPLICATION_IS COMPLETE.__IE_IHE_DEPARTMENT_EAILS_IO_MAKE_A_DETERMINATION_AS_IO_IHE_COMPLETENESS_DE_IHE_APPLICATION_WITHIN_IHE PRESCRIBED_15-DAY_PERIOD: THE_APPLICATION_SHALL_BE_DEEMED_IO_BE_COMPLETE.__If_the_applicant_fails_to_submit_the_necessary_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)151 After theapplication-has all applications in
6	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 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 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 29 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.

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

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financial

+	usil the applications the department shall notify the
2	applicant and affected persons of its decision within 5
3	working_days_after_expiration_of_the_review_period. IEIHE
4	DEPARTMENT FAILS TO REACH A DECISION AND NOTLEY THE
5	APPLICANT OF ITS DECISION WITHIN THE DEADLINES ESTABLISHED
5	IN_IMIS_SECTION_AND_IE_IMAT_DELAY_CONSTITUTES_AN_ABUSE_OF
7	THE DEPARTMENT'S DISCRETION: THE APPLICANT MAY APPLY TO
8	DISTRICT COURT FOR A MRIT OF MANDAMUS TO FORCE THE
9	DEPARIMENT_TO_RENDER_A_DECISION."

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

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titlal the relationship of the health services being reviewed to the applicable health systems plan, state health plan: and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

21 f2)(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;

###Idl the availability of less costly quality 1 more effective alternative methods of 2 equivalent or 3 providing such services;

immediate

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feasibility of the proposal as well as the probable impact 5 of the proposal on the costs of and charges for providing 6 health services by the person proposing the health service; 7 +6+(fl the relationship and financial impact of the 8 9 services proposed to be provided to the existing health care system of the area in which such services are proposed to be 10 11 provided and the consistency of the proposal with joint 12 planning efforts by health care providers in the area;

f7+(g) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services:

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

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

long-term

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may include medical and other health profession schools.

multidisciplinary clinics, and specialty centers.

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tittlk) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

ft21(1) 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;

transportation, and accessibility of health services for persons who live outside urban areas in relation to the

proposal; and

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 6 department_of_social_and_rebabilitation_services__determines that such use would cause the state medical d 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 way be the basis for imposing conditions but may not be the sole basis for denial of a certificate of need. IHE 16 17 DEPARIMENT MAY ADOPT RULES FOR THE IMPOSITION OF SUCH 18 CONDITIONS. BUT ONLY IE THE SECRETARY OF THE UNITED STATES 19 DEPARTMENT DE HEALTH AND HUMAN SERVICES HAS APPROVED AN 20 AMENDMENT TO THE STATE'S MEDICATO PLAN. ADDPTED PURSUANT TO 21 42 U.S.C. 1396A. ALLOWING FOR THE IMPOSITION OF SUCH 22 ". 2 NOITIONS."

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

r	1211-3 Certificate of Need Shall terminate-1-year-afterthe
2	date-of-issuance-unless <u>expire</u> :
3	figtheopplicanthascommenced-construction-if-the
4	projectprovidesforconstructionorhasincurredan
5	enforceablecapital-expenditure-commitment-for-projects-not
6	involving-construction;-or
7	†2}thecertificateofneedvalidityperiodis
В	extendedbythedepartment-for-one-additional-period-of-6
9	monthsy-upon-showing-good-cause-bytheapplicantforthe
10	extensions
11	fal_l_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	<pre>(b) 1 year from the estimated time for completion as</pre>
16	shown in the application if the approved project is not
17	completeior
15	<pre>fcl_when_the_department_determines*_after_opportunity</pre>
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	(2) 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

6 months. The department max grant such an extension upon

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3	(3) The nolder 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-o-health-systems-agency-designated-purswantto
11	Tiele-xy-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 it
14	declsiony-if-therequestisreceivedbythedepartmen
15	within-30-colendar-days-after-the-decision-is-announcedw-An
16	otheraffectedpersonmayyforgoodcausey-request-the
17	department-to-reconsider-its-decisionatsuchahearing.
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 <u>initial</u> 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 writter

the applicant's demonstrating good cause as defined by

department_rule.

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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-2-4-681-through-2-4-623*

- designated-pursuant-to-Fittle-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 timited--to-s-review-of-the-record-upon-which-the-department mede-its-decision must be a hearing de novo with respect to the flodings and conclusions identified pursuant to the subsection (21 and must be conducted pursuant to the contested case provisions of the Sontana Administrative Procedure Act. The-boardy-upon-request-of-ony--party--to--on

- appeal--before--the--boardy--sholl--hear--oral-erguments-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-ressons-found-in-2-4-704*
- 10 (4) The final decision of the board shall be
 11 considered the decision of the department for purposes of an
 12 appeal to district court. Any affected person may appeal
 13 this decision to the district court as provided in Title 2.
 14 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-firey-stormy-civil-disturbancey-or-any-act-of-Gody
 the-department-may-issue-a-certificate-of-need-for-only-the
 replacement-of-the-previously-existing-facility-or-portion
 thereofy Ibe department shall issue a certificate of need
 for a proposed capital expenditure if:
- 25 (1) the capital expenditure is required to eliminate

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or prevent imminent safety hazards as defined by federal.
state: or local fire: building: or life safety codes or
regulationsortocomplywithstatelicensures
contification, or accreditation standards: and

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- (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 16 the various categories and types of health services eligible 17 for madicaid reimbursement; 18
 - (b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected nopulation growth and demographic patterns on at least the following elements:
- 23 (i) trends in unit costs for services, including inflation: 24
 - (ii) trends in use of services;

1	(iii)	trends	in	medicaid	rec	ipient	levels;	and
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- (iv) the effects of new and projected facilities and 2 services for which a need has been identified in the state 3 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 medicald 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.
- 14 (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

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enabla the department to determine whether the expenditures are exempt;

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- (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.
- VEW_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.
- 23 (2) Section 9 is intended to be codified as an 24 integral part of Title 50, chapter 5, part 3, and the 25 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.

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

11 <u>YEW_SECTION.</u> Section 13. Effective date <u>DATES. (1)</u>
12 This act is effective on passage and approval. <u>WITH_DELAYED</u>
13 <u>EFFECTIVE_DATES.</u>

14 (2)_ON_JULY_1._1987._50=5=301._50=5=302._AND__50=5=304

15 IHRQUGH__50=5=308._MCA._AND_SECTIONS_8_IHRQUGH_10_HEREGE_ARE

16 REPEALED_UNLESS_REENACTED_BY_IHE_LEGISLATURE.

17 (3) ON JULY 1: 1987: 50-5-101: MCA: IS AMENDED BY
18 DELETING SUBSECTIONS (3): (5): (6): (8): (9): (10): (13):
19 1141: AND (27) UNLESS REENACTED BY THE LEGISLATURE.

20 (41 CN JULY 1: 1987: 50:5:106: MCA: IS AMENDED TO READ
21 AS FOLLOWS: UNLESS REENACTED BY THE LEGISLATURE:

22 **50-5-106. Records and reports required of health care
23 facilities -- confidentiality. Health care facilities shall
24 keep records and make reports as required by the department.
25 Before February 1 of each year, every licensed health care

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

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1	SENATE BILL NO. 293
ż	INTRODUCED BY HAGER. WINSLOW, HANUEL
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. HCA; AND
11	PROVIDING AN IMMEDIATE EFFECTIVE DATE AND DELAYED EFFECTIVE
12	DAIES."
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
19	otherwise, the following definitions apply:
19	(1) "Accreditation" means a designation of approval.
20	(2) MAdult 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_wbo_reimburse_bealth_care
4	facilities in the area affected by the proposals 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

region of the state. as established by department rule, that

24 (57(1) "Board" means the board of health and 25 environmental sciences, provided for in 2-15-2104.

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(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.
<pre>+6+(9) "Certificate of need" means a written</pre>
authorization by the department for a person to proceed with
a proposal subject to 50-5-301.
(10)_MChallenge_periodM_weans_a_periods_not_exceeding_1
mooth: 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,
radiobloassay, cytological, immunohematological,
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.

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 geed to
5	one of the applicants would substantially prejudice the
6	department's review of the other applications.
7	†9† <u>(14)</u> "Construction" means the physical erection of a
8	health care facility and any stage thereof, including ground
9	breaking. <u>or_remodelingreplacement.or_renovation_of</u> an
10	existing bealth 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

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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.

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

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[20] "Health systems agency" means an entity which is organized and operated in the manner described in \$2 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 \$2 U.S.C. 3001-2.

tistical "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.

t+6f1221 "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.

f±7+(23) *Infirmary* means a facility located in a
university, college, government institution, or industry for
the treatment of the sick or injured, with the following
subdefinitions:

- 14 (a) an "infirmary--A" provides outpatient and 15 inpatient care;
- (b) an "infirmary--B" provides outpatient care only.

 17 (10)(25) "Joint commission on accreditation of
 18 hospitals" means the organization nationally recognized by
 19 that name with headquarters in Chicago, Illinois, that
 20 surveys health care facilities upon their requests and
 21 grants accreditation status to any health care facility that
 22 it finds meets its standards and requirements.
- 23 ti97(25) "Kidney treatment center" means a facility
 24 which specializes in treatment of kidney diseases, including
 25 freestanding hemodialysis units.

ተኛፀ <u>ት(26)</u> (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.
- t21) "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

-7-

1	health_services and==which=costs=more=thon=the=expenditure
2	thresholds-established-in-oc-pursuant==to==58:5:381f51x==fbc
3	term-dosa-coot-cinclude-medical-squipment-acquired-by-coc-on
4	behalfofoclinicolloboratorytoprovideclinical
5	toboratory===services===if===the===stinicat===taboratory==is
6	independent=of=a=physiciants-office=oc=bospitsl=and=has=been
7	determined_under_fitle_8VIII-of_tbs_Social_SecurityAct==to
8	meet-the-requirementa-of-paragrapha-thit-and-thit-of-section
۰	1861421-06-0600-000

tiliness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

f22j-#New-institutional-health-services#-means*
faj--the---constructiony----developmenty----or----other
establishment--of--a--health--care--facility--which--did-not
previously-exist;

(b)--any-expenditure-by-or-on-behalf-of-a--health--core
facility--within--a--12-month--period-in-excess-of-6150y000y
whichy--under--generally--accepted---accounting---principles
consistently--appliedy-is-a-capital-expenditure--Whenever-n
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--haye--required

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reviewiftheacquisitionhadbeenbypurchasey-			
ecquisition-shall-be-considered-a-capitalexpendit			
subject-to-reviews			

tch--a-change-in-bed-capacity-of-a-health-care-facility
which--increases--or--decreases--the--total--number-of-bedsy
redistributes-beds--among--various--service--categoriesy--or
relocates--such--beds--from-one-physical-facility-or-site-to
another-over-a-2-year-period-by-more-than-18-beds-or-18%--of
the-total-licensed-bed-capacityy-whichever-is-lessi

{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
l2-month--period--prior--to--the-time-such-services-would-be
offered-or-the-delation-by--a--health--care--facility--of--a
service-previously-offereds

tet--the--expansion--of--a-geographic-service-area-of-a

{23}1221 *Nonprofit health care facility* means a
health care facility owned or operated by one or more
nonprofit corporations or associations.

t24f12Ql **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.

teathers, or mental care. An 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.

7 (全行(23) "Patient" means an individual obtaining
B services, including skilled nursing care, from a health care
9 facility。

10 <u>f28}(34)</u> "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.

f29f(25) "Public health center" means a publicly owned
facility providing health services, including laboratories,
clinics, and administrative offices.

tagical "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.

25 f311(37) "Resident" means a person who is in a

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1	long-term care facility for intermediate or personal care.
2	f32}-*State-plan*-means-the-state-medical-facility-plan
3	provided-for-in-part-4*
4	(38) "State health plan" weans the plan prepared by the
5	department_pursuant_to_42_V=SeC=_300m=2(a)(2)="
6	Section 2. Section 50-5-301, MCA, is amended to read:
7	*50-5-301. When application certificate of need is
8	required. (1) Unless a person has submitted an application
9	hasbeensubmittedtoand for and is the holder of a
10	certificate of need granted by the department, no-person he
11	may not initiate any of the following:
12	fitanewthstitutional-health-service-as-defined-in
13	50-5-101+
14	(2)any-expend÷ture-by-or-on-behalf-af-ahealthcare
15	facilityinexcess-of-\$150y000-made-in-preparation-for-the
16	offeringordevelopmentofanewinstitutionalhealth
17	service-and-any-arrangement-or-commitment-made-for-financing
18	theoffering-or-development-of-the-new-institutional-health
19	serviceExpendituresmadeinthepreparationforthe
20	offering-of-a-nex-institutional-health-service-shall-include
21	expendituresfororchitecture?-designsy-preliminary-plansy
22	working-drawingsy-specificationsy-studiesy-and-surveysw
23	tal_the incurring of an obligation by or on behalf of
24	a_bealtb_care_facility for any capital expenditures other
25	than to acquire an existing health care facility. that

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1	exceeds the expenditure thresholds established in or
2	pursuant to subsection 151. Ibe costs of aox studies:
3	surveys: designs: plans: working drawings: specifications:
4	and_other_activities_fincluding_staff_effort_and_consulting
5	andotherservices)essentialtothe_acquisition:
6	improvement: expansion: or replacement of any plant or
7	equipment_with_respect_to_which_an_expenditure_is_made_must
. 8	he included in determining if the expenditure exceeds the
9	expenditure_thresholds.
10	(b) a change to the bed capacity of a health care
11	facility by 10 beds or 10% whichever is less in any 2-year
12	period_through:
13	(i) an increase or decrease in the total number of
14	bedsi
15	(ii) a redistribution of bads among various categories:
16	Qf.
17	(iii) a relocation of beds from one physical facility
18	or_site_to_another:
19	(c) the addition of a health service that is offered
20	by_or_on_behalf_of_a_bealth_care_facility_which_was_not
21	offered_by_or_on_behalf_of_the_facility_within_the12=month
22	period_before_the_month_in_which_the_service_would_be
23	offered_and_which_will_result_in_additional_annual_operatiog
24	and amortization_expenses_of \$50+000 \$100+000 or more:
25	(d) the acquisition by any person of major medical

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1	equipment=== lo ==detecmidioszzybetber=medicalzequipmentzcosts
2	more::theo::the::expenditure::thresholds:::eatablished::in
3	aubacction==151x==the==costa==of==atudiesx=auryeyax=designax
4	plansx:=:working==:drawingsx:=:specificationsx===and===other
5	activities==essential==to==acquiring==the==equipment=must=be
6	includedx=lf=the=equipment=is=acquired=for==less==than==fair
7	worket==valuex==the==terw===EcoatE==includea==the=fait=worket
8	TOTHER PROVIDED SUCH ACQUISITION HOULD 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	HEALIH_CARE_EACILIIY.
12	(e) the incurring of an obligation for a capital
13	expenditure by any person to acquire an existing bealth care
14	facilî:x_if:
15	(i) the person has failed to submit the notice of
16	intent_required_by_50=5=302131:_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_wbich_is_being_replaced:_or
24	<u>[g]_the_expansion_of_the_geographical_service_area_of</u>
25	a_home_bealth_agency.

1	(2) For purposes of this section:
2	(a) "obligation for capital expenditure" does no
· 3	include the authorization of bond sales or the offering o
4	sale_of_bonds_pursuant_to_the_state_long=range_buildin
5	program under Title 17. chapter 5. part 4. and Title 18
6	chapter_2part_l:
7	(b) a health maintenance organization is to b
8	considered a health care facility except to the exten
9	exempted from certificate of need requirements as prescribe
10	in_rules_adopted_by_the_department.
11	(3) A proposed change in a project associated with
12	capital expenditure under subsections (1)(a) or (1)(b) fo
13	which the department has previously issued a certificate o
14	need requires subsequent certificate of need review if the
15	change is proposed within 1 year after the date the activit
16	for which the capital expenditure was granted a certificat
17	of oeed is undertaken. As used in this subsection. a "chang
18	in_project*_includes_but_is_not_limited_to_anv_change_in_th
19	bed_capacity_of_a_health_care_facility_as_described_i
20	subsection_(1)(b)_and_the_addition_or_termination_of_
21	health_care_service.
22	(4) If a person acquires an existing bealth car
23	facility_without_a_certificate_of_need_and_proposes_t
24	change.within l year after the acquisition.the services o
25	<u>bed_capacity_of_the_bealtb_care_facilitythe_propose</u>

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1	change requires a certificate of need if one would have been
2	required originally under subsection filtel.
3	151_1al_Expenditure_thresholds_for_certificate_of_need
4	review_are_established_as_follows:
5	(i) For acquisition of equipments the expenditure
6	threshold_is_\$500±000a
7	(ii)_For_construction_of_health_care_facilitiesthe
8	expenditure_threshold_is_\$750.000.
9	tbl_Ibe_department_may_by_rule_establish_tbresholds
10	higher_than_those_established_in_subsection_(5)(a)_if
11	necessary and appropriate to accomplish the objectives of
12	this_parts*
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	fal the form and content of notices of intent and
18	applications:
19	thi the scheduling and consolidation of reviews of
20	similar_proposals:
21	icl_the_abbreviated_review_of_a_proposal_that:
22	(i)_does_not_significantly_affect_the_cost_or_use_of
23	healta_care:
24	fill is necessary to eliminate or preyent 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 of
4	certification_standardsi_or
5	(ix) has been approved by the legislature pursuant to
6	the long-range building program under Title 17. chapter 5
7	part_4. and litle_18. chapter_2. part_l. providing_to-
8	legislativefindingsaccompanyingsuch_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_bearings:_and
13	<u>fel_the_establishment_of_batching_periods_fo</u>
14	certificate_of_need_applications_for_new_beds+_establishmen
15	of new services: expansion-of-existing-services: an
16	replacement of health care facilities.
17	121_At least 30 days before any person acquires of
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	(1)131 Any person intending to initiate an activity
24	for which a certificate of need is required shall submit
25	letter of intent to the department. After-receipt The letter

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t of intent must be olaced 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 or if no batching is required, after receipt of the letter of intent, the department shall send the emplicant-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 10 for-certificates-of-need-shall-be-prescribed-by-rule-by--the 11 deportments

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127(4) Within 15 calendar days after receipt of the application, the department shall determine whether it contains-sufficient-information-to-determine-if-the-proposed octivity--meets--the--standards-in-50-5-304 is complete. If. AFIFR IHE 15 DAYS: the application is found incomplete, the department shall request the necessary additional information <u>WITHIN 5 WORKING DAYS</u>. <u>UPON RECEIPT OF THE</u> ADDITIONAL INFORMATION FROM THE APPLICATIONS THE DEPARTMENT SHALL HAVE 15 DAYS TO DETERMINE IF THE APPLICATION IS COMPLETE. IF THE DEPARTMENT FAILS TO MAKE A DETERMINATION AS 13 THE COMPLETENESS OF THE APPLICATION WITHIN THE PRESCRIBED 15-DAY PERIOD. THE APPLICATION SHALL BE DEEMED TO BE COMPLETE. 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 enelicent applicants and all other affected persons regarding the department's projected time_schedule_for review of the application-and-athe-review-period-atime schedule applications. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant 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_tbe_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 aporopriate by the decartment.

(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

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L	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_IHE
٠	DEPARTMENT FAILS TO REACH A DECISION AND NOTIFY THE
•	APPLICANT DE IIS DECISION WITHIN THE DEADLINES ESTABLISHED
,	IN_IHIS_SECTION_AND_IE_THAT_DELAY_CONSTITUTES_AN_ABUSE_OF
,	THE DEPARTMENT'S DISCRETION. THE APPLICANT MAY APPLY TO
1	DISTRICT COURT FOR A MRIT OF MANDAMUS TO FORCE THE
•	DEPARTMENT_IQ_RENDEB_A_DECISION.**

Section 4. Section 50-5-304, MCA, is amended to read:
#50-5-304. Review criteria, required findings, and
standards. (11) 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:

title XV of the Public Health Service Act, as amended;

t2)(b) the relationship of services reviewed to the long-range development plan, if any, of the person providing 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; f57(a) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

tottle the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided and the consistency of the proposal with joint planning efforts by health care providers in the area;

the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8)(b) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

t9†(i) the special needs and circumstances of those entities which provide a substantial portion of their services or resources; or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities

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

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tion in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

tit)(k) the special needs and circumstances of blomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

that III 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:

transportation, and accessibility of health services for persons who live outside urban areas in relation to the

proposal; and

CONDITIONS."

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2 <u>{14}(0)</u> 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 involve new or increased use of medicaid funds and the 7 department_of_social_and_rebabilitation_services__determines 9 that such use would cause the state medicaid budget for long-term care facilities to be exceeded, the department of 10 11 health and environmental sciences may impose conditions on a certificate of need for new long-term care beds. including 12 limitation on the number of approved beds which may be 13 certified for medicaid natients. Availability of medicaid 14 funding may be the basis for imposing conditions but may not 15 16 be the sole basis for denial of a certificate of need. IHE 17 DEPARTMENT MAY ADOPT RULES FOR THE IMPOSITION DE SUCH 18 CONDITIONS. BUT ONLY IF THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN 19 20 AMENDMENT TO THE STATE'S MEDICATO PLAN: ADDPTED PURSUANT TO 42 U.S.C. 1396A. ALLOWING FOR THE IMPOSITION OF SUCH 21

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

750-5-305. Period of validity of approved application.

750-5-305. Period of validity of approved application.

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-	TTITE CELLILICATE OF HEED SHALL FELMINGES - AGES - BLEEL - FRE
2	date-of-issuance-unless <u>expire</u> :
3	(i)theapplicanthascommenced-construction-if-the
4	projectprovidesforconstructionorhasincurredan
5	enforcesblecapital-expenditure-commitment-for-projects-not
6	involving-construction;-or
7	f2)thecertificateofneedvalidityperiodis
8	extendedbythedepartment-for-one-additional-period-of-6
9	monthsy-upon-showing-good-cause-bytheappiteantforthe
0	extensions
1	fal_l_year_after_its_issuance_if_the_applicant_has_not
2	commenced_construction_on_a_project_requiring_construction
3	or_basootincurred_an_enforceable_capital_expenditure
4	commitment_for_a_project_not_requiring_construction:
5 .	(b)lyearfrom the estimated_time_for_completion_as
6	shown in the application if the approved project is not
7	completei_or
8	<pre>1cl_wbeq_the_department_determines.after_opportunity</pre>
9	for a bearing, that the bolder of the certificate of need
0	has_violated_the_provisions_of_this_chapter.rules_adopted
1.	hereunders or the terms of the certificate of needs
2	[2] _Ibe_bolder_of_an_unexpired_certificate_of_need_may
3	apply to the department to extend the term of the
4	certificate of need for one additional period not to exceed
5	6 months. The department may drant such an extension upon

1	the applicant's demonstrating good cause as defined by
2	department_rule:
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=daxperiod_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	750-5-306. Right to hearing and appeal. (1) The
0	applicant-or-a-health-systems-agency-designated-pursuantto
.1	Title-XV-of-the-Public-Health-Service-Act An affected person
.2	may request and-shall-be-granted-a-public-hearing-before the
3	department to hold a public hearing and to reconsider its
4	decisiony-if-therequestisreceivedbythedepartment
.5	within-30-colendar-days-after-the-decision-is-announcedw-Any
.6	otheraffectedpersonmayyforgoodcausey-request-the
.7	department-to-reconsider-its-decisionatsuchahearing.
.8	The department shall grant the request if the affected
9	person submits the request in writing showing good cause as
0	defined in rules adopted by the department and if the
1	request is received by the department within 30 20 calendar
2	days after the initial decision is announced. The public
:3	hearing to reconsider shall be held, if warranted or
4	required. within 30 20 calendar days after its request. The

department shall make its final decision and

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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 -2-4-681-through -2-4-683-

- designated-pursuant-to-Title-KV-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 timited--to-a-review-of-the-record-upon-which-the-department made-its-decision must be a bearing de noxo 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-hoordy-upon-request-of-any--perty--to--on

- appeal—before—the—boardy—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 affirms_reverses_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.
- 15 (5) The department may by rule prescribe in greater
 16 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-ony-part-of-a-health-care-factlity-as-a
 result-of-firey-stormy-civil-disturbancey-or-any-act-of-Gody
 the-department-may-issue-a-certificate-of-need-for-only--the
 replacement-of-the-previously-existing-facility-or-portion
 thereofy Ine_department_shall_issue_a_certificate_of_need
 for_a_proposed_capital_expenditure_if:
 - (11 the capital expenditure is required to eliminate

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1	or prevent imminent safety hazards as defined by federal
2	state: or local fire: building: or life safety codes on
3	regulationsortocomplywithstatelicensure
L	cortification, or accreditation standards; and

- 5 (21_the_department_bas_determined_that_the_facility_or
 6 service_for_which_the_capital_expenditure_is_proposed_is
 7 oneeded_add_that_the_obligation_of_the_capital_expenditure_is
 8 consistent_with_the_state_bealth_plan="
 - NEW_SECTIONs Section 8. Report and recommendations to legislature on medicald funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicald 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 medical funding needs for the next blennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:
- 23 (i) trends in unit costs for services, including 24 inflation;
- 25 (ii) trends in use of services:

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1 (iii) trends in medicaid recipient levels;	1	(iii)	trends	in	medicaid	reci	pient	levels;	an
--	---	-------	--------	----	----------	------	-------	---------	----

- 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 plane.
 - (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.
- 18 NEW_SECTIONs Section 9. Exemptions from certificate
 19 of need review. (1) Except as provided in subsection {2}y
 20 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

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enable the department to determine whether the expenditures are exempt;

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- (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.
- 19 <u>NEW SECTION</u> Section 10. Codification instructions.
 20 (1) Section 8 is intended to be codified as an integral part
 21 of Title 53, chapter 6, part 1, and the provisions of Title
 22 53, chapter 6, part 1, apply to section 8.
- 23 (2) Section 9 is intended to be codified as an 24 Integral part of Title 50, chapter 5, part 3, and the 25 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.
- 11 NEW_SECTION. Section 13. Effective date DATES. (1)
 12 This act is effective on passage and approval. HITH DELAYED
 13 EFFECTIVE DATES.
- 14 (21_0N_JULY_1*_1987*_50=5=301*_50=5=302*_AND__50=5=304

 15 IHROUGH__50=5=308*_MCA*_AND_SECTIONS_8_IHROUGH_10_HEREOF_ARE

 16 REPEALED_UNLESS_REENACIED_BY_IHE_LEGISLATURE*
- 17 (3)_ON_JULY_1*_1987*_ 50=5=101*_MCA*_IS_AMENDED_BY

 18 DELETING_SUBSECTIONS_(3)*_(5)*_(6)*_(8)*_(9)*_(10)*_(13)*

 19 1141*_ANO_(27)_UNLESS_REENACTED_BY_THE_LEGISLATURE*
- 20 (4) ON JULY 1: 1987: 50-5-106: MCA: IS AMENDED TO READ
 21 AS FOLLOWS: UNLESS REFNACTED BY THE LEGISLATURE:
- 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 calendar year to the department. The report shall be on 2 forms and contain information specified by the department. 3 Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A 7 department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure 9 was authorized in writing by the patient, his quardian, or 10 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--end--ony 17 information---relevant--to--review--of--these--applicationsy pursuant-to-part-3y-shall-be-accessible-to-the-publicy* 18

-End-

SB 293

48th Legislature SB 0293/02

CENATE DILL NO 202

1	SENATE DICE NUM 275
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
9	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	QAIES-
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	 #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

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 proposals 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.

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- 151 **Batch** means those letters of intent and applications of a specified category and within a specified region of the states as established by department rule, that are accumulated during a Single batching periods
- (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.
- 24 (5)171 "Board" means the board of health and 25 environmental sciences, provided for in 2-15-2104.

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2	or_oo_behalf_of_a_bealth_care_facility_thats_woder_generally
3	accepted_accounting_principles_is_not_properly_chargeable
4	as_an_expense_of_operation_and_maintenance.
5	f67191 "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 l
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	radiopioassay, cytological, immunohematological,
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.

(8) "Canital expenditure" means an expenditure made by

1	(13) "Comparative review" weams a joint review of two
2	or more certificate of need applications within a give
3	batch which are determined by the department to b
4	competitive in that the granting of a certificate of need t
5	one_of_the_applicants_would_substantially_prejudice_th
6	department's review of the other applications.
7	197(141 "Construction" means the physical erection of
8	health care facility and any stage thereof, including ground
9	breaking. <u>or_remodelingreplacement.or_renovation_of_a</u>
10	existing bealth care facility.
11	(10)(15) "Department" means the department of healt
12	and environmental sciences provided for in Title 2: chapte
13	15. part 21.
14	(11)(16) "Federal acts" means federal statutes for th
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" mean:
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 of

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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.

(±47/12) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

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1201—"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.

fiff1211 "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.

tie; 1221 "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.

10 (177,123) "Infirmary" means a facility located in a
11 university, college, government institution, or industry for
12 the treatment of the sick or injured, with the following
13 subdefinitions:

- 14 (a) an Minfirmary--AM provides outpatient and 15 impatient care;
- the specializes in treatment of kidney diseases, including freestanding hemodialysis units.

	f20)(26) (a) "Long-term care facility" means a facility
•	or part thereof which provides skilled nursing care o
1	intermediate nursing care to a total of two or more person
•	or personal care to more than three persons who are no
	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.
- 1211. 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

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5	laboratory:::secrices:::if:::tbe:::clinical:::laboratory:::s
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9	1861fs1_of_thot_set.
10	'f21+[28] "Mental health center" means a facility

t227(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.

f22;-=New-institutional-health-gervices=-meanst

faj--the---constructiony----developmenty----or---other
establishment--of--a--health--care--facility--which--did-not
previously-exists

{b}--any-expenditure-by-or-on-behalf-of-a--health--care
facility--within--a--l2-month--period-in-excess-of-\$158y888y
whichy--under--qanerally--accepted---accounting---principles
consistently--appliedy-is-a-capital-expenditure---whenever-n
health-care-facility-or-a-person-on-behalf-of-a-health--care
facility--makes--on--acquisition--under--lease-or-comporable
arrangement-or-through-donationy-which-would--haye--required

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revie	wiftheacquisitionhadbeenbyparchaseysuch
acqui	ettionenettbeconsiderede-capitalexpenditure
subje	ect-to-reviews
	te?a-change-in-bed-capacity-of-a-health-care-facility

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tel-a-change-in-bed-capacity-of-a-health-care-factitity
which-increases-or-decreases-the-total-number-of-bedsv
redistributes-beds-among-various-service-categoriesv-or
relocates-such-beds-from-ons-physical-facility-or-site-to
another-over-a-2-year-period-by-more-than-10-beds-or-10%--of
the-total-licensed-bed-capacitys-whichever-is-less;

(d)--health--services-which-are-offered-in-or-through-a
health-eare-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-offereds

tet--the--expansion--of--a-geographic-service-area-of-a

teat1291 "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

#249(30) *Observation bed* means a bed occupied for not
more than 6 hours by a patient recovering from surgery or
other treatment.

facility that it can provide specific health services.

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1 t267(32) "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 (£771231 "Patient" means an individual obtaining 8 services, including skilled nursing care, from a health care 9 facility.

10 t2071341 "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 t291(35) "Public health center" means a publicly owned 15 facility providing health services, including laboratories, 16 clinics, and administrative offices.

17 t3011361 "Rehabilitation facility" means a facility 18 which is operated for the primary purpose of assisting in 19 the rehabilitation of disabled persons by providing comprehensive medical 20 evaluations and services, 21 psychological and social services, or vocational evaluation and training or any combination of these services and in 22 23 which the major portion of the services is furnished within 24 the facility.

25 (91)1271 "Resident" means a person who is in a

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1	long-term care facility for intermediate or personal care.
2	f32)-"State-plan"-meons-the-state-medical-facility-plan
3	provided-for-in-part-4:
4	(38) "State health plan" seass the plan prepared by the
5	department_pursuant_to_42_U_SaCa_3D0m=2(a)(2)a*
6	Section 2. Section 50-5-301. MCA, is amended to read:
7	*50-5-301. When application certificate of geed is
8	required. (1) Unless a person bas submitted an application
9	has-been-submitted-to-and for and is the holder of a
10	certificate of need granted by the department, no-person be
1:1	may not initiate any of the following:
12	(i)
13	58-5-101†
14	(2)sny-expenditure-by-or-on-hebelf-of-ahealthcare
15	factlityinexcess-of-#158v888-made-in-preparation-for-the
16	offeringordevelopmentofanewinstitutionalhealth
17	service-and-any-arrangement-or-commitment-made-for-financing
18	theoffering-or-development-of-the-new-institutional-health
19	serviceExpendituresmadeinthepreparationforthe
20	offering-of-a-new-institutional-health-service-shall-include
21	expendituresforarchitectural-designsy-preliminary-plansy
22	working-drawingsy-specificationsy-studiesy-and-surveysy
23	(a)_the_incurring_of_an_obligation_by_or_on_behalf_of
24	a health care facility for any capital expenditure, other
25	than to acquire an existing health care facilitys that

1	exceeds the expenditure thresholds established in or
2	pursuant to subsection (51. Ibe costs of any studies.
3	surveys. designs. plans. working drawings. specifications.
4	and_other_activities_fincluding_staff_effort_and_consulting
5	and other services) essential to the acquisition.
6	improvement.expansion.or_replacement_of_any_plant_or
7	equipment with respect to which an expenditure is made must
8	be included in determining if the expenditure exceeds the
9	expenditure_thresholds.
10	(b) a change in the bed capacity of a bealth care
11	facility by 10 beds or 10%, whichever is less, in any 2-year
12	period_through:
13	(i) an increase or decrease in the total number of
14	bedsi
15	(ii) a redistribution of beds among various categories:
16	ΩE,
17	filil a relocation of beds from one physical facility
18	or_site_to_another:
19	(c) the addition of a health service that is offered
20	by or on behalf of a health care facility which was not
21	offered by or on behalf of the facility within the 12-month
22	period before the month in which the service would be
23	offered and which will result in additional annual operation
24	and_amortization_expenses_of_#\$8***** \$190**000 or_more:
25	(d) the acquisition by any person of major medical

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6	includeds:if:the=equipment:ia:ecquired:fee==leaa==thee:=feir
7	mocket==xeluex==the==term===cost===ineludes==the=foir=mocket
8	weige: PROVIDED_SUCH_ACQUISITION_WOULD_HAVE_REQUIRED_A
9	CERTIFICATE OF NEED PURSUANT TO SUBSECTION (1114) OR (111C)
10	DE INIS SECTION IE IT HAD BEEN MADE BY OR ON BEHALF OF A
11	HEALIH_CARE_EACILITY.
12	(el_tbe_iocurring_of_an_obligation_for_a_canital
13	expenditure_by_any_person_to_acquire_an_existing_health_care
14	facility_if:
15	fil the person has failed to submit the notice of
16	intent_required_by_50-5=302131:_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
50	bed_capacity_of_the_facility;
21	(f)_tbeconstruction:development:orother
22	establishment_of_a_health_care_facility_which_did_not
23	previously_exist_or_which_is_being_replaced:_or
24	fgl_the_expansion_of_the_geographical_service_area_of
25	a_bome_bealtb_ageocy.

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1	121 For ourooses of this section:
2	<pre>fal "obligation for capital expenditure" does not</pre>
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_litle_lle_chanter_5e_part_4e_and_litle_l8e
6	chapter_2*_part_l:
7	fbl.a_bealth_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_wbich_the_capital_expenditure_was_granted_a_rertificate
17	of_need_is_undertaken. As_used_in_this_subsection.a_mchange
13	in project* includes but is not limited to any change in the
19	bed_capacity_of_a_bealth_care_facility_as_described_in
20	subsection (1116) and the addition or termination of a
21	bealth_care_service.
22	(4) If a person acquires an existing bealth 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

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i	change requires a certificate of need if one would have been
2	required_originally_under_subsection_fllfel.
3	(5) (a) Expenditure thresholds for certificate of need
4	review are established as follows:
5	(i) For acquisition of equipments the expenditure
6	threshold_is_\$500:000a
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. (11 Ihe 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	healta_cacei
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	fililis necessary to comply with licensure of
4	certification_standardsi_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 little 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_oroxisions_of_[section_9]:
11	idl the format of public informational hearings and
12	reconsideration_hearingsi_and
13	tel_the_establishment_of_batching_periods_for
14	certificate of need applications for new beds. establishmen
15	Of Dew Services: expansion-of-remisting-radrates: app
16	replacement of health care facilities.
17	121_At_least_30_days_before_any_person_acquires_or
18	enters_into_a_contract_to_acquire_an_existing_bealth_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_beoffered_in
22	the facility and its bed capacity.
23	f=>(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

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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_requireds_after_receipt_of_the_letter
5	ofintent: the department shall send the applicant-a gerson
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. Theform
9	andcontentof-the-motification-of-intent-and-applications
10	for-certificates-of-need-shall-be-prescribed-by-rule-bythe
11	department*

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#21/4) 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. AFIER INC 15 DAYS: the application is found incomplete, the department shall request the __necessary additional information WITHIN 5 MORKING DAYS. UPON RECEIPT OF THE ADDITIONAL INFORMATION FROM THE APPLICATION. THE DEPARTMENT SHALL HAVE 15 DAYS TO DETERMINE IF THE APPLICATION IS COMPLETE. IE THE DEPARTMENT EAILS TO MAKE A DETERMINATION AS ID THE COMPLETENESS OF THE APPLICATION WITHIN THE PRESCRIBED 15-DAY PERIOD. THE APPLICATION SHALL BE DEEMED TO 8E_COMPLETE. if the applicant fails to supmit the necessary additional_information_requested_by_the__department__by__the

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deadline_as_prescribed_by_department_rules_for_considering
such_reviewsi_a_new_letter_of_intent_and_application_must_be
submitted_and_the_application_will_be_dropped_from_the
current_batche

137151 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 10 11 review of the application--and--the--review--period--time 12 schedule applications. The review period for the 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 pertaiding to similar types of services, facilities, or 18 equipment_affecting_the_same_health_service_area_may_he 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.

t+)[6] The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject

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- deny the application. The department shall notify the 2 applicant and affected persons of its decision within 5 working days after expiration of the review period. IE __IHE 3 DEPARTMENT FAILS IQ REACH A DECISION AND NOTIFY THE 5 APPLICANT OF IIS DECISION WITHIN THE DEADLINES ESTABLISHED IN IHIS SECTION AND IF THAT DELAY CONSTITUTES AN ABUSE OF 7 THE DEPARTMENT'S DISCRETION: THE APPLICANT MAY APPLY TO DISTRICE COURT FOR A WRIT OF MANDAMUS TO FORCE THE 9 DEPARTMENT_TO_RENDER_A_DECISION."
- Section 4. Section 50-5-304. MCA. is amended to read: 10 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, including but not limited to the following considerations 16 and required findings:

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- 111/a) the relationship of the health services being reviewed to the applicable health systems plans state health plans and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;
- 21 f21(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 f3f(c) the need that the population served or to be 25 served by the services has for the services;

t4+1dl the availability of less costly quality 1 equivalent or more effective alternative methods of providing such services:

f5f(el the immediate and financial long-term feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service; +6+1f) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided and the consistency of the proposal with igint

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

planoing_efforts_by_health_care_providers_in_the_area;

f8f(b) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

f9fil the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entitles

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may include medical and other health profession schools;

multidisciplinary clinics; and specialty centers.

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titick) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages:

ttet(1) 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;

transportation, and accessibility of health services for persons who live outside urban areas in relation to the

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l proposal; and

tt41101 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.

121__If_an_application_for_new_long=term_care_beds_will 7 involve new or increased use of medicaid funds and the department_of_social_and_rebabilitation_services__determines that such use would cause the state medicaid budget for long=term_care_facilities_to_be_exceeded__the_department__of 10 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 needs IHE 17 DEPARTMENT MAY ADDRI RULES FOR THE IMPOSITION OF SUCH 18 CONDITIONS. BUT ONLY IE THE SECRETARY OF THE UNITED STATES 19 DEPARTHENT OF HEALTH AND HUMAN SERVICES HAS APPROVED AN 20 AMENDMENT_IO_THE_STATE'S_MEDICATO_PLAN*_ADDRIED_PURSUANT__TO 21 42_UaSaCa_1396Aa_ALLOWING_EDR_IHE_1MPOSITION_OF_SUCH CONDITIONS." 27

23 Section 5. Section 50-5-305, MCA, is amended to read:
24 "50-5-305. Period of validity of approved application.
25 * Ill_Unless_an_extension_is_granted_extsuant_to_subsection

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1	121:_3 certificate of need shall terminate-1-year-afterthe
2	date-of-tssuance-unitess axpics:
3	(i)theapplicanthascommenced-construction-if-the
4	projectprovidesforconstructionorhasincurredar
-	enforceablecapital-expenditure-commitment-for-projects-not
6	involving-construction;-or
7	fitythecertificateofneedvelidityperiodis
B	extendedbythadepartment-for-one-oddftional-period-of-6
9	monthsy-upon-showing-good-eause-bytheapplicantforthe
10	extensions
11	<pre>fal_l_year_after_its_issuance_if_the_applicant_has_not</pre>
12	commenced_construction_on_a_project_requiring_construction
13	or_basoptincurred_anenforceablecapitalexpenditure
14	commitment for a project not requiring construction:
15	1bl 1 year from the estimated time for completion as
16	shown in the application if the approved project is not
17	complete:_or
19	(c)_when_the_department_determines.after_opportunity
19	for a hearing, that the bolder of the certificate of need
20	has violated the provisions of this chapters rules adopted
21	hereunder.or the terms of the certificate of need.
22	121 The bolder 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

6_sonths. The department may grant such an extension upon

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2	department_rule.
3	131 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_geed_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-pursuantto
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 bearing and to reconsider its
14	declsion-if-therequestisreceivedbythedepartment
15	within-38-cai endar-days-after-the-detision-is-announced An y
16	otheraffectedpersonmayforgoodcausev-raquest-the
17	department-to-reconsider-its-decisionatsuchahearing.
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 <u>initial</u> 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

1 the applicant's demonstrating good cause as defined by

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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 secondance-with-2-4-601-through-2-4-623*

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- 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 seope-of-the hearing before the board is timited-to-a-review-of-the-record-upon-which-the-department made-its-decision must be a bearing de navo 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-hoordy-upon-request-of-any-porty-to-an

- appeal -- before--the--boardy--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 affirms reverses 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 prejudicad-for-any-of-the-reasons-found-in-2-4-784*
- (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-ony-part-of-a-health-core-facility-as-a

 result-of-firey-stormy-civil-disturbancey-or-any-act-of-6ody

 the-department-may-issue-a-certificate-of-need-for-only-the

 replacement-of-the-previously-existing-facility-or-portion

 thereofy Ibs_department_shall_issue_a_certificate_of_need

 for_a_proposed_capital_expenditure_lf:
- (1) the capital expenditure is required to eliminate

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1	or prevent imminent safety bazards as _defined_by_federals
2	states_or_local_fires_buildings_or_life_safety_codes_or
3	regulations or to comply with state licensure
4	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 plans."
- NEW_SECTION. Section 6. Report and recommendations to legislature on medicald funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicald 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:
- 23 (i) trends in unit costs for services, including
 24 inflation:
 - (ii) trends in use of services;

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1	eiii i	trends	in	medicald	recipient	· levels:	and
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- 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.
 - (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.
- 18 <u>NEW_SECTION</u> 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

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- 1 enable the department to determine whether the expenditures 2 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.

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- (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.
- <u>YEW_SECTION</u> Section 10. Codification instructions. (1) Section 6 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.

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(2) Section 9 is intended to be codified as an 23 24 integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, apply to section 9. 25

1	YEH_SECTION: Section 11. Severability. If a part of
2	this act is invalid, all valid parts that are severable from
3	the invalid part remain in effect. If a part of this act is
4	invalid in one or more of its applications, the part remains
5	in effect in all valid applications that are severable from
6	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. 111 11 12 This act is effective on passage and approval <u>with DELAYED</u>. 13 EFFECLIVE_DATES.
- 14 (21 ON JULY 1- 1987- 50-5-301- 50-5-302- AND 50-5-304 15 IHROUGH 50-5-308. HCA. AND SECTIONS 8 THROUGH 10 HEREOF ARE 16 REPEALED UNLESS REEMACTED BY THE LEGISLATURE.
- 17 (3) ON JULY 1: 1987: 50:5-101: MCA: IS AMENDED BY 18 DELETING SUBSECTIONS (31: (51: (6): (81: (9): (10): (13): 19 1141. AND 1271 UNLESS REENACTED BY THE LEGISLATURE.
- 20 141 DM JULY 1. 1987. 50-5-106. MCA. IS AMENDED TO READ 21 AS FOLLOWS. UNLESS REENACTED BY THE LEGISLATURE:
- 22 *50-5-106. Records and reports required of health care facilities -- confidentiality. Health care facilities shall 23 keep records and make reports as required by the department. 24
- 25 Before February 1 of each year, every licensed health care

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facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his quardlan, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications-by health-care-facilities-for--certificates--of--need--and--ony information---relevant--to--review--of--these--applicationsy pursuant-to-part-3y-shell-be-eccessible-to-the-public**

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