

SENATE BILL NO. 246

INTRODUCED BY BENGTON, HIMSL, WINSLOW, BARDANOUVE,
KEATING, REGAN, J. BROWN, HANSON, DEVLIN, ADDY,
M. WILLIAMS, ECK, WEEDING, HAGER, DARKO, E. SMITH,
SWITZER, BRADLEY, MENAHAN, LYNCH, VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES

IN THE SENATE

JANUARY 29, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
FEBRUARY 23, 1987	THIRD READING, PASSED. AYES, 33; NOES, 17.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
MARCH 24, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
	STATEMENT OF INTENT ADOPTED.
MARCH 27, 1987	SECOND READING, CONCURRED IN AS AMENDED.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 81; NOES, 17.

RETURNED TO SENATE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE SENATE

APRIL 3, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 4, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1
 2 INTRODUCED BY *Senate* BILL NO. *246* *Keut*
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND *Dr. Brown*
 4 ENVIRONMENTAL SCIENCES *M. Hanson*
 5 *Devin* *Wendy Hager* *Stanko* *E. Smith* *Ly*
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 7 CLARIFY CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE
 8 FACILITIES; EXTENDING THE TIME THE CERTIFICATE OF NEED LAWS
 9 ARE IN EFFECT; AMENDING SECTIONS 50-5-101, 50-5-301,
 10 50-5-302, 50-5-304 THROUGH 50-5-306, 50-5-309, MCA, AND
 11 SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN
 12 EFFECTIVE DATE."

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. (Temporary) Definitions. As used in parts 1
 17 through 4 of this chapter, unless the context clearly
 18 indicates otherwise, the following definitions apply:

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

20 (2) "Adult day-care center" means a facility,
 21 freestanding 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 person" means the an applicant
 25 for certificate of need, members a member of the public who

1 are--to will be served by the proposal, a health care
 2 faciilities facility located in the geographic area affected
 3 by the application, agencies an agency which establish
 4 establishes rates for health care facilities, a third-party
 5 payers payer who reimburse reimburses health care facilities
 6 in the area affected by the proposal, and-agencies or an
 7 agency which plan-or-assist plans or assists in planning for
 8 such facilities; including-any-agency-quaifying-as-a-health
 9 systems-agency-pursuant-to>Title-XV--of--the--Public--Health
 10 Service-Act.

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

16 (5) "Batch" means those letters of intent and
 17 applications--of-a-specified-category-and-within-a-specified
 18 region-of-the-state,as-established-by-department--rule, to
 19 seek approval for new beds or major medical equipment that
 20 are accumulated during a single batching period.

21 (6) "Batching period" means a period, not exceeding 1
 22 month, established by department rule during which letters
 23 of intent for--specified--categories--of--new--institutional
 24 health--services--and-for-specified-regions-of-the-state-may
 25 be to seek approval for new beds or major medical equipment

1 are accumulated pending further processing of all letters of
2 intent within the batch.

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

5 (8) "Capital expenditure" means:

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

10 (b) a lease, donation, or comparable arrangement that
11 would be a capital expenditure if money or any other
12 property of value had changed hands.

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

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

21 (11) "Chemical dependency facility" means a facility
22 whose function is the treatment, rehabilitation, and
23 prevention of the use of any chemical substance, including
24 alcohol, which creates behavioral or health problems and
25 endangers the health, interpersonal relationships, or

1 economic function of an individual or the public health,
2 welfare, or safety.

3 (12) "Clinical laboratory" means a facility for the
4 microbiological, serological, chemical, hematological,
5 radiobioassay, cytological, immunohematological,
6 pathological, or other examination of materials derived from
7 the human body for the purpose of providing information for
8 the diagnosis, prevention, or treatment of any disease or
9 assessment of a medical condition.

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

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

22 (15) "Construction" means the physical erection of
23 a health care facility and any stage thereof, including
24 ground breaking, or remodeling, replacement, or renovation
25 of an existing health care facility.

1 ~~(15)~~(16) "Department" means the department of health
2 and environmental sciences provided for in Title 2, chapter
3 15, part 21.

4 ~~(16)~~(17) "Federal acts" means federal statutes for the
5 construction of health care facilities.

6 ~~(17)~~(18) "Governmental unit" means the state, a state
7 agency, a county, municipality, or political subdivision of
8 the state, or an agency of a political subdivision.

9 ~~(18)~~(19) "Health care facility" or "facility" means any
10 institution, building, or agency or portion thereof, private
11 or public, excluding federal facilities, whether organized
12 for profit or not, used, operated, or designed to provide
13 health services, medical treatment, or nursing,
14 rehabilitative, or preventive care to any person or persons.
15 The term does not include offices of private physicians or
16 dentists. The term includes but is not limited to ambulatory
17 surgical facilities, health maintenance organizations, home
18 health agencies, hospices, hospitals, infirmaries, kidney
19 treatment centers, long-term care facilities, mental health
20 centers, outpatient facilities, public health centers,
21 rehabilitation facilities, and adult day-care centers.

22 ~~(19)~~(20) "Health maintenance organization" means a
23 public or private organization ~~organized-as-defined-in-42~~
24 ~~U.S.C.-300e7-as-amended~~ which provides or arranges for
25 health care services to enrollees on a prepaid or other

1 financial basis, either directly through provider employees
2 or through contractual or other arrangements with a provider
3 or group of providers.

4 ~~(20)~~"Health systems agency" means an entity which is
5 organized and operated in the manner described in 42--U.S.C.
6 300i-2--and which is capable, as determined by the secretary
7 of--the--United--States--department--of--health--and--human
8 services,--of--performing--each--of--the--functions--described--in
9 42-U.S.C.-300i-2.

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

17 (22) "Hospice" means a coordinated program of home and
18 inpatient health care that provides or coordinates
19 palliative and supportive care to meet the needs of a
20 terminally ill patient and his family arising out of
21 physical, psychological, spiritual, social, and economic
22 stresses experienced during the final stages of illness and
23 dying and that includes formal bereavement programs as an
24 essential component.

25 (23) "Hospital" means a facility providing, by or under

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

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

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

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

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

25 (26) "Kidney treatment center" means a facility which

1 specializes in treatment of kidney diseases, including
 2 freestanding hemodialysis units.

3 (27) (a) "Long-term care facility" means a facility or
 4 part thereof which provides skilled nursing care,
 5 intermediate nursing care, or intermediate developmental
 6 disability care to a total of two or more persons or
 7 personal care to more than four persons who are not related
 8 to the owner or administrator by blood or marriage. The
 9 term does not include adult foster care licensed under
 10 53-5-303, community homes for the developmentally disabled
 11 licensed under 53-20-305, community homes for physically
 12 disabled persons licensed under 53-19-111, boarding or
 13 foster homes for children licensed under 41-3-1142, hotels,
 14 motels, boardinghouses, roominghouses, or similar
 15 accommodations providing for transients, students, or
 16 persons not requiring institutional health care, or juvenile
 17 and adult correctional facilities operating under the
 18 authority of the department of institutions.

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

23 (c) "Intermediate nursing care" means the provision of
 24 nursing care services, health-related services, and social
 25 services under the supervision of a licensed nurse to

1 patients not requiring 24-hour nursing care.

2 (d) "Intermediate developmental disability care" means
3 the provision of nursing care services, health-related
4 services, and social services for the developmentally
5 disabled, as defined in 53-20-102(4), or persons with
6 related problems.

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

11 (28) "Major medical equipment" means a single unit of
12 medical equipment or a single system of components with
13 related functions which is used to provide medical or other
14 health services and costs a substantial sum of money.

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

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

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

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

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

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

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

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

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

1 (38) "Resident" means a person who is in a long-term
2 care facility for intermediate or personal care.

3 (39) "State health plan" means the plan prepared by the
4 department pursuant to 42-U.S.C.-300m-2(a)(2) to project the
5 need for health care facilities within Montana and approved
6 by the statewide health coordinating council and the
7 governor.

8 50-5-101. (Effective July 1, 1989) Definitions. As
9 used in parts 1 through 4 of this chapter, unless the
10 context clearly indicates otherwise, the following
11 definitions apply:

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

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

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

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

24 (5) "Clinical laboratory" means a facility for the
25 microbiological, serological, chemical, hematological,

1 radiobioassay, cytological, immunohematological,
2 pathological, or other examination of materials derived from
3 the human body for the purpose of providing information for
4 the diagnosis, prevention, or treatment of any disease or
5 assessment of a medical condition.

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

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

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

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

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

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

8 (11) "Health maintenance organization" means a public
 9 or private organization ~~organized as defined in 42-U.S.C.~~
 10 ~~380e, as amended that provides or arranges for health care~~
 11 ~~services to enrollees on a prepaid or other financial basis,~~
 12 ~~either directly through provider employees or through~~
 13 ~~contractual or other arrangements with a provider or group~~
 14 ~~of providers.~~

15 ~~{12} "Health systems agency" means an entity which is~~
 16 ~~organized and operated in the manner described in 42-U.S.C.~~
 17 ~~3801-2 and which is capable, as determined by the secretary~~
 18 ~~of the United States department of health and human~~
 19 ~~services, of performing each of the functions described in~~
 20 ~~42-U.S.C.-3801-2.~~

21 {13}(12) "Home health agency" means a public agency or
 22 private organization or subdivision thereof which is engaged
 23 in providing home health services to individuals in the
 24 places where they live. Home health services must include
 25 the services of a licensed registered nurse and at least one

1 other therapeutic service and may include additional support
 2 services.

3 {14}(13) "Hospice" means a coordinated program of home
 4 and inpatient health care that provides or coordinates
 5 palliative and supportive care to meet the needs of a
 6 terminally ill patient and his family arising out of
 7 physical, psychological, spiritual, social, and economic
 8 stresses experienced during the final stages of illness and
 9 dying and that includes formal bereavement programs as an
 10 essential component.

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

23 {16}(15) "Infirmiry" means a facility located in a
 24 university, college, government institution, or industry for
 25 the treatment of the sick or injured, with the following

1 subdefinitions:

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

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

5 †17†(16) "Joint commission on accreditation of
6 hospitals" means the organization nationally recognized by
7 that name with headquarters in Chicago, Illinois, that
8 surveys health care facilities upon their requests and
9 grants accreditation status to any health care facility that
10 it finds meets its standards and requirements.

11 †10†(17) "Kidney treatment center" means a facility
12 which specializes in treatment of kidney diseases, including
13 freestanding hemodialysis units.

14 †9†(18) (a) "Long-term care facility" means a facility
15 or part thereof which provides skilled nursing care,
16 intermediate nursing care, or intermediate developmental
17 disability care to a total of two or more persons or
18 personal care to more than four persons who are not related
19 to the owner or administrator by blood or marriage. The
20 term does not include adult foster care licensed under
21 53-5-303, community homes for the developmentally disabled
22 licensed under 53-20-305, community homes for physically
23 disabled persons licensed under 53-19-111, boarding or
24 foster homes for children licensed under 41-3-1142, hotels,
25 motels, boardinghouses, roominghouses, or similar

1 accommodations providing for transients, students, or
2 persons not requiring institutional health care, or juvenile
3 and adult correctional facilities operating under the
4 authority of the department of institutions.

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

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

13 (d) "Intermediate developmental disability care" means
14 the provision of nursing care services, health-related
15 services, and social services for the developmentally
16 disabled, as defined in 53-20-102(4), or persons with
17 related problems.

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

22 †20†(19) "Mental health center" means a facility
23 providing services for the prevention or diagnosis of mental
24 illness, the care and treatment of mentally ill patients or
25 the rehabilitation of such persons, or any combination of

1 these services.

2 ~~(21)~~(20) "Nonprofit health care facility" means a
3 health care facility owned or operated by one or more
4 nonprofit corporations or associations.

5 ~~(22)~~(21) "Observation bed" means a bed occupied for not
6 more than 6 hours by a patient recovering from surgery or
7 other treatment.

8 ~~(23)~~(22) "Offer" means the holding out by a health care
9 facility that it can provide specific health services.

10 ~~(24)~~(23) "Outpatient facility" means a facility,
11 located in or apart from a hospital, providing, under the
12 direction of a licensed physician, either diagnosis or
13 treatment, or both, to ambulatory patients in need of
14 medical, surgical, or mental care. An outpatient facility
15 may have observation beds.

16 ~~(25)~~(24) "Patient" means an individual obtaining
17 services, including skilled nursing care, from a health care
18 facility.

19 ~~(26)~~(25) "Person" means any individual, firm,
20 partnership, association, organization, agency, institution,
21 corporation, trust, estate, or governmental unit, whether
22 organized for profit or not.

23 ~~(27)~~(26) "Public health center" means a publicly owned
24 facility providing health services, including laboratories,
25 clinics, and administrative offices.

1 ~~(28)~~(27) "Rehabilitation facility" means a facility
2 which is operated for the primary purpose of assisting in
3 the rehabilitation of disabled persons by providing
4 comprehensive medical evaluations and services,
5 psychological and social services, or vocational evaluation
6 and training or any combination of these services and in
7 which the major portion of the services is furnished within
8 the facility.

9 ~~(29)~~(28) "Resident" means a person who is in a
10 long-term care facility for intermediate or personal care.

11 ~~(30)~~(29) "State health plan" means the plan prepared by
12 the department pursuant to 42-8-5-C--300m-2(a)+2) to project
13 the need for health care facilities within Montana and
14 approved by the statewide health coordinating council and
15 the governor."

16 Section 2. Section 50-5-301, MCA, is amended to read:
17 "50-5-301. (Temporary) When certificate of need is
18 required -- definitions. (1) Unless a person has submitted
19 an application for and is the holder of a certificate of
20 need granted by the department, he may not initiate any of
21 the following:

22 (a) the incurring of an obligation by or on behalf of
23 a health care facility for any capital expenditure, other
24 than to acquire an existing health care facility or to
25 replace major medical equipment with equipment performing

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

11 (b) a change in the bed capacity of a health care
 12 facility by 10 through an increase in the number of beds or
 13 10%, whichever is less, in any 2-year period through:

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

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

18 ~~(iii) a relocation of beds from one physical health~~
 19 ~~care facility or site to another, unless:~~

20 (i) the number of beds involved is 10 or less or 10%
 21 or less of the licensed beds (if fractional, rounded down to
 22 the nearest whole number), whichever figure is smaller, in
 23 any 2-year period;

24 (ii) a letter of intent is submitted to the department;
 25 and

1 (iii) the department determines the proposal will not
 2 significantly increase the cost of care provided or exceed
 3 the bed need projected in the state health plan;

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

10 (d) the acquisition by any person of major medical
 11 equipment, provided such acquisition would have required a
 12 certificate of need pursuant to subsection (1)(a) or (1)(c)
 13 of this section if it had been made by or on behalf of a
 14 health care facility;

15 (e) the incurring of an obligation for a capital
 16 expenditure by any person or persons to acquire 50% or more
 17 of an existing health care facility if unless:

18 (i) the person ~~has failed to submit the notice~~ submits
 19 the letter of intent required by 50-5-302(2); or and

20 (ii) the department finds ~~within 30 days after it~~
 21 ~~receives the notice of intent required by 50-5-302(3)~~ that
 22 the acquisition will ~~result in a change in the services or~~
 23 ~~not significantly increase the cost of care provided or~~
 24 increase bed capacity of the facility;

25 (f) the construction, development, or other

1 establishment of a health care facility which is being
 2 replaced or which did not previously exist or which is being
 3 replaced, or, by any person, including another type of
 4 health care facility.

5 (g) the expansion of the geographical service area of
 6 a home health agency; or

7 (h) the use of hospital beds to provide services to
 8 patients or residents needing only skilled nursing care,
 9 intermediate nursing care, or intermediate developmental
 10 disability care, as those levels of care are defined in
 11 50-5-101.

12 (2) For purposes of subsection (1)(b), a change in bed
 13 capacity occurs on the date new or relocated beds are
 14 licensed pursuant to part 2 of this chapter and the date a
 15 final decision is made to grant a certificate of need for
 16 new or relocated beds, unless the certificate of need
 17 expires pursuant to 50-5-305.

18 (2)(3) For purposes of this section part, the
 19 following definitions apply:

20 (a) "Health care facility" or "facility" means a
 21 nonfederal ambulatory surgical facility, home health agency,
 22 hospital, long-term care facility, mental health center with
 23 inpatient services, inpatient chemical dependency facility,
 24 rehabilitation facility with inpatient services, or personal
 25 care facility.

1 (b) (i) "Long-term care facility" means an entity
 2 which provides skilled nursing care, intermediate nursing
 3 care, or intermediate developmental disability care, as
 4 defined in 50-5-101, to a total of two or more persons.

5 (ii) The term does not include adult foster care
 6 licensed under 53-5-303; community homes for the
 7 developmentally disabled licensed under 53-20-305; community
 8 homes for physically disabled persons licensed under
 9 53-19-111; boarding or foster homes for children licensed
 10 under 41-3-1142; hotels, motels, boardinghouses,
 11 roominghouses, or similar accommodations providing for
 12 transients, students, or persons not requiring institutional
 13 health care; or juvenile and adult correctional facilities
 14 operating under the authority of the department of
 15 institutions.

16 (a)(c) "obligation Obligation for capital expenditure"
 17 does not include the authorization of bond sales or the
 18 offering or sale of bonds pursuant to the state long-range
 19 building program under Title 17, chapter 5, part 4, and
 20 Title 18, chapter 2, part 17.

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

25 (3)--A--proposed--change--in--a--project--associated--with--a

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

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

17 (d) "Personal care facility" means an entity which
 18 provides services and care which do not require nursing
 19 skills to more than four persons who are not related to the
 20 owner or administrator by blood or marriage and who need
 21 some assistance in performing the activities of everyday
 22 living. The term does not include those entities excluded
 23 from the definition of "long-term care facility" in
 24 subsection (b).

25 ~~(5)(a)(4) Expenditure thresholds for certificate of~~

1 need review are established as follows:

2 ~~(i)(a) For acquisition of equipment and the~~
 3 ~~construction of any building necessary to house the~~
 4 ~~equipment, the expenditure threshold is \$500,000 \$750,000.~~

5 ~~(ii)(b) For construction of health care facilities,~~
 6 ~~the expenditure threshold is \$750,000 \$1,500,000.~~

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

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

15 (a) the form and content of notices letters of intent
 16 and applications;

17 (b) the scheduling and consolidation of reviews of
 18 similar proposals;

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

20 (i) does not significantly affect the cost or use of
 21 health care;

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

1 (iii) is necessary to comply with licensure or
2 certification standards; or

3 ~~(iv) has been approved by the legislature pursuant to~~
4 ~~the long range building program under Title 17, chapter 57~~
5 ~~part 4, and Title 18, chapter 27, part 17 providing the~~
6 ~~legislative findings accompanying such approval give~~
7 ~~consideration to the criteria of 50-5-304, and subject to~~
8 ~~the provisions of 50-5-309;~~

9 (iv) would add a health service that is subject to a
10 certificate of need review under 50-5-301(1)(c);

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

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds and major
15 medical equipment, challenge periods, and the circumstances
16 under which applications from different batches may be
17 comparatively reviewed; establishment of new services; and
18 replacement of health care facilities; and

19 (f) the circumstances under which a certificate of
20 need may be approved for the use of hospital beds to provide
21 skilled nursing care, intermediate nursing care, or
22 intermediate developmental disability care to patients or
23 residents needing only that level of care.

24 (2) At least 30 days before any person or persons
25 acquires acquire or enters enter into a contract to acquire

1 50% or more of an existing health care facility, the person
2 they shall submit to the department and the appropriate
3 health systems agency a notice of his letter noting intent
4 to acquire the facility and of the services to be offered in
5 the facility and its bed capacity.

6 (3) Any person intending to initiate an activity for
7 which a certificate of need is required shall submit a
8 letter of intent to the department. ~~The letter of intent~~
9 ~~must be placed in the appropriate batch, if any. Any person~~
10 ~~who applies for comparative review by submitting a challenge~~
11 ~~letter of intent during the challenge period immediately~~
12 ~~following the batch must submit an application within 30~~
13 ~~days after the close of the challenge period.~~

14 (4) If the proposal is for new beds or major medical
15 equipment, the department shall place the letter of intent
16 in the appropriate batch unless, in the case of beds, the
17 proposal is determined to be exempt from review.

18 (5) Any person who desires comparative review with a
19 proposal in a batch must submit a challenge letter of intent
20 at least by the end of the challenge period following the
21 batching period for that batch.

22 (6) The department shall give to each person
23 submitting a letter of intent written notice of the
24 deadline for submission of an application for certificate of
25 need, which will be no less than 30 days after the notice is

1 sent.

2 ~~{4}~~(7) Within ~~15~~ calendar 20 working days after
3 receipt of the an application, the department shall
4 determine whether it is complete. ~~If, after the 15 days, and~~
5 if the application is found incomplete, ~~the department shall~~
6 send a written request to the applicant for the necessary
7 additional information within 5 working days. Upon receipt
8 of the additional information from the applicant, the
9 department shall have 15 working days to determine if the
10 application is complete and to send a notice to the
11 applicant that the application is complete or incomplete.
12 ~~If the department fails to make a determination as to the~~
13 ~~completeness of the application within the prescribed 15-day~~
14 ~~period, the application shall be deemed to be complete. If~~
15 ~~the applicant fails to submit the necessary additional~~
16 ~~information requested by the department by the deadline as~~
17 ~~prescribed by department rules for considering such reviews,~~
18 ~~a new letter of intent and application must be submitted and~~
19 ~~the application will be dropped from the current batch. The~~
20 request for added information may be repeated as long as the
21 information submitted remains incomplete, and the department
22 shall have 15 working days after each submission to send a
23 notice that the application is complete or incomplete.

24 (8) If a proposal is to undergo comparative review
25 with another proposal but the applicant fails to submit the

1 necessary additional information requested by the department
2 by the deadline prescribed by department rules, the
3 application must be dropped from the current batch and
4 assigned to the next batching period.

5 (9) If the department fails to send the notices within
6 the periods prescribed in subsection (7), the application is
7 considered to be complete on the last day of the time period
8 during which the notice should have been sent.

9 ~~{5}~~(10) After an application is designated complete,
10 immediate notification must be sent to the applicant and all
11 other affected persons regarding the department's projected
12 time schedule for review of the application. The review
13 period for an application may be no longer than 60 90
14 calendar days after the notice is sent ~~unless a hearing is~~
15 ~~required, in which case the review must be completed within~~
16 ~~120 days after the notice is sent~~ or, if a challenging
17 application has been submitted as provided in subsection ~~{3}~~
18 (5), within ~~120~~ 90 days after the notice has been sent for
19 all such challenging applications. A longer period is
20 permitted with the consent of all affected applicants. ~~All~~
21 ~~completed applications pertaining to similar types of~~
22 ~~services, facilities, or equipment affecting the same health~~
23 ~~service area may be considered in relation to each other.~~
24 ~~During the review period a public hearing may be held if~~
25 ~~requested by an affected person or when considered~~

1 ~~appropriate by the department. Such a hearing must be~~
 2 ~~conducted pursuant to the provisions for informat~~
 3 ~~proceedings of the Montana Administrative Procedure Act.~~

4 (11) During the review period a public hearing may be
 5 held if requested by an affected person or when considered
 6 appropriate by the department.

7 (12) Each completed application may be considered in
 8 relation to other applications pertaining to similar types
 9 of facilities or equipment affecting the same health service
 10 area.

11 ~~(13)~~ The department shall, after considering all
 12 comments received during the review period, issue a
 13 certificate of need, with or without conditions, or deny the
 14 application. The department shall notify the applicant and
 15 affected persons of its decision within 5 working days after
 16 expiration of the review period.

17 (14) If the department fails to reach a decision and
 18 notify the applicant of its decision within the deadlines
 19 established in this section and if that delay constitutes an
 20 abuse of the department's discretion, the applicant may
 21 apply to district court for a writ of mandamus to force the
 22 department to render a decision."

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

24 "50-5-304. (Temporary) Review criteria, required
 25 findings, and standards. ~~(1)~~ The department shall by rule

1 promulgate and utilize, as appropriate, specific criteria
 2 for reviewing certificate of need applications under this
 3 chapter, including but not limited to the following
 4 considerations and required findings:

5 ~~(a)~~(1) the ~~relationship of the health services degree~~
 6 ~~to which the proposal being reviewed to the applicable~~
 7 ~~health systems plan, is consistent with the current state~~
 8 ~~health plan, and annual implementation plan developed~~
 9 ~~pursuant to Title XV of the Public Health Service Act, as~~
 10 ~~amended;~~

11 ~~(b) the relationship of services reviewed to the~~
 12 ~~long-range development plan, if any, of the person providing~~
 13 ~~or proposing the services;~~

14 ~~(c)~~(2) the need that the population served or to be
 15 served by the services proposal has for the services;

16 ~~(d)~~(3) the availability of less costly
 17 quality-equivalent or more effective alternative methods of
 18 providing such services;

19 ~~(e)~~(4) the immediate and long-term financial
 20 feasibility of the proposal as well as the probable impact
 21 of the proposal on the costs of and charges for providing
 22 health services by the person proposing the health service;

23 ~~(f)~~(5) the relationship and financial impact of the
 24 services proposed to be provided to the existing health care
 25 system of the area in which such services are proposed to be

1 provided; and

2 (6) the consistency of the proposal with joint

3 planning efforts by health care providers in the area;

4 ~~(g)~~(7) the availability of resources, including health

5 manpower, management personnel, and funds for capital and

6 operating needs, for the provision of services proposed to

7 be provided and the availability of alternative uses of such

8 resources for the provision of other health services;

9 ~~(h)~~(8) the relationship, including the organizational

10 relationship, of the health services proposed to be provided

11 to ancillary or support services;

12 ~~(i)---the---special---needs---and---circumstances---of---those~~

13 ~~entities---which---provide---a---substantial---portion---of---their~~

14 ~~services---or---resources,---or---both,---to---individuals---not---residing~~

15 ~~in---the---health---service---areas---in---which---the---entities---are~~

16 ~~located---or---in---adjacent---health---service---areas.---Such---entities~~

17 ~~may---include---medical---and---other---health---profession---schools,~~

18 ~~multidisciplinary---clinics,---and---specialty---centers.~~

19 ~~(j)---the---special---needs---and---circumstances---of---health~~

20 ~~maintenance---organizations---for---which---assistance---may---be~~

21 ~~provided---under---Title---XIII---of---the---Public---Health---Service---Act.~~

22 ~~Such---needs---and---circumstances---include---the---needs---of---and---costs~~

23 ~~to---members---and---projected---members---of---the---health---maintenance~~

24 ~~organization---in---obtaining---health---services---and---the---potential~~

25 ~~for---a---reduction---in---the---use---of---inpatient---care---in---the~~

1 ~~community---through---an---extension---of---preventive---health---services~~

2 ~~and---the---provision---of---more---systematic---and---comprehensive~~

3 ~~health---services.~~

4 ~~(k)---the---special---needs---and---circumstances---of---biomedical~~

5 ~~and---behavioral---research---projects---which---are---designed---to---meet~~

6 ~~a---national---need---and---for---which---local---conditions---offer---special~~

7 ~~advantages.~~

8 ~~(l)~~(9) in the case of a construction project, the

9 costs and methods of the proposed construction, including

10 the costs and methods of energy provision, and the probable

11 impact of the construction project reviewed on the costs of

12 providing health services by the person proposing the

13 construction project; and

14 ~~(m)~~(10) the distance, convenience, cost of

15 transportation, and accessibility of health services for

16 persons who live outside urban areas in relation to the

17 proposal; and

18 ~~(n)---any---other---criteria,---required---findings,---or~~

19 ~~requirements---for---reviewing---certificate---of---need---applications~~

20 ~~cited---in---the---federal---regulations---found---in---Title---42,---CFR,~~

21 ~~Part---123,---as---amended.~~

22 ~~(2)---if---an---application---for---new---long---term---care---beds---will~~

23 ~~involve---new---or---increased---use---of---medicaid---funds---and---the~~

24 ~~department---of---social---and---rehabilitation---services---determines~~

25 ~~that---such---use---would---cause---the---state---medicaid---budget---for~~

1 long-term--care-facilities-to-be-exceeded; the department of
 2 health and environmental sciences may impose conditions on a
 3 certificate of need for new long-term care--beds;--including
 4 limitation--on--the--number--of--approved--beds--which--may--be
 5 certified for medicaid patients;--Availability--of--medicaid
 6 funding may be the basis for imposing conditions but may not
 7 be--the--sole--basis--for--denial--of--a--certificate--of--need;--The
 8 department may--adopt--rules--for--the--imposition--of--such
 9 conditions;--but--only--if--the--secretary--of--the--United--States
 10 department of health and--human--services--has--approved--an
 11 amendment--to--the--state's--medicaid--plan;--adopted--pursuant--to
 12 42--U.S.C.--1396a;--allowing--for--the--imposition--of--such
 13 conditions."

14 Section 5. Section 50-5-305, MCA, is amended to read:
 15 "50-5-305. (Temporary) Period of validity of approved
 16 application. (1) Unless an extension is granted pursuant to
 17 subsection {2} {3}, a certificate of need shall expire:

18 (a) 1 year after its issuance the decision to issue it
 19 is final if the applicant has not commenced construction on
 20 a project requiring construction or has not incurred an
 21 enforceable capital expenditure commitment for a project not
 22 requiring construction;

23 (b) 1 year from after the date the project is
 24 commenced plus the estimated period of time for completion
 25 as shown in the application if the approved project is not

1 complete; or

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

6 (2) For purposes of subsection (1)(a), if a
 7 reconsideration hearing is granted or an appeal filed under
 8 50-5-306, the final decision will be that following the
 9 hearing or resolving the appeal.

10 {2}{3} The holder of an unexpired certificate of need
 11 may apply to the department to extend the term of the
 12 certificate of need for one additional period not to exceed
 13 6 months. The department may grant such an extension upon
 14 the applicant's demonstrating good cause as defined by
 15 department rule.

16 {3}{4} The holder of an unexpired certificate of need
 17 shall report to the department in writing on the status of
 18 his project at the end of each 90-day 6-month period after
 19 being granted a certificate of need until completion of the
 20 project for which the certificate of need was issued."

21 Section 6. Section 50-5-306, MCA, is amended to read:
 22 "50-5-306. (Temporary) Right to hearing and appeal.

23 (1) An affected person may request the department to hold a
 24 public hearing and to reconsider its decision. The
 25 department shall grant the request if the affected person

1 submits the request in writing showing good cause as defined
2 in rules adopted by the department and if the request is
3 received by the department within 20 30 calendar days after
4 the initial decision is announced.

5 (2) The public hearing to reconsider shall must be
6 held, if warranted or required, within 20 30 calendar days
7 after its request the request is received unless the
8 requestor agrees to waive the time limit.

9 (3) The reconsideration hearing must be conducted
10 pursuant to the provisions for informal proceedings of the
11 Montana Administrative Procedure Act.

12 (4) The department shall make its final decision and
13 serve the appellant with written findings of fact and
14 conclusions of law in support thereof of the decision within
15 30 days after the conclusion of the reconsideration hearing.

16 (2)(5) Any affected person may appeal the department's
17 final decision to the district court as provided in Title 2,
18 chapter 4, part 7.

19 (6) If a petition to appeal the decision is filed, the
20 decision must be stayed pending resolution of the appeal by
21 the courts.

22 (3)(7) The department may by rule prescribe in greater
23 detail the hearing and appellate procedures."

24 Section 7. Section 50-5-309, MCA, is amended to read:
25 "50-5-309. (Temporary) Exemptions from certificate of

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

3 (a) expenditures by a health care facility for
4 nonmedical and nonclinical facilities and services unrelated
5 to the operation of the health care facility if a letter of
6 intent is submitted pursuant to 50-5-302 at least 30 days
7 prior to incurring an obligation for capital expenditures to
8 enable the department to determine whether the expenditures
9 are exempt;

10 (b) a A project proposed by an agency of state
11 government that has been approved by the legislature
12 pursuant to the long-range building program under Title 17,
13 chapter 5, part 4, and Title 18, chapter 2, part 1, is
14 exempt from certificate of need review.

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

1 ~~adoption-of-the-rule."~~

2 NEW SECTION. Section 8. Fees. (1) There is no fee for
3 filing a letter of intent.

4 (2) An application for certificate of need approval
5 must be accompanied by a fee equaling 0.3% of the capital
6 expenditure projected in the application, except that the
7 fee may be no less than \$500.

8 (3) With the exception of the department and an
9 applicant whose proposal is approved and who does not
10 request the hearing, each affected person who is a party in
11 a reconsideration hearing held pursuant to 50-5-306(1)
12 shall pay the department \$500.

13 (4) Fees collected under this section must be
14 deposited in the state general fund.

15 Section 9. Section 13, Chapter 329, Laws of 1983, is
16 amended to read:

17 "Section 13. Effective dates. (1) This act is
18 effective on passage and approval, with delayed effective
19 dates.

20 (2) On July 1, ~~1987~~ 1989, 50-5-301, 50-5-302, and
21 50-5-304 through ~~50-5-308~~ 50-5-309, MCA, and ~~sections--8~~
22 ~~through--10~~ section 9 hereof are repealed unless reenacted by
23 the legislature.

24 (3) On July 1, ~~1987~~ 1989, 50-5-101, MCA, is amended by
25 deleting subsections (3), (5), (6), ~~(9)~~, (8) through (10),

1 ~~(13)~~ (14), (15), and ~~(27)~~ (28) unless reenacted by the
2 legislature.

3 (4) On July 1, ~~1987~~ 1989, 50-5-106, MCA, is amended to
4 read as follows, unless reenacted by the legislature:

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

24 NEW SECTION. Section 10. Codification instruction.
25 Section 8 is intended to be codified as an integral part of

1 Title 50, chapter 5, part 3, and the provisions of Title 50,
2 chapter 5, part 3, apply to section 8.

3 NEW SECTION. Section 11. Extension of authority. Any
4 existing authority of the department of health and
5 environmental sciences to make rules on the subject of the
6 provisions of this act is extended to the provisions of this
7 act.

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

12 NEW SECTION. Section 13. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 14. Effective date. This act is
19 effective June 30, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB246, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise and clarify certificate of need requirements for health care facilities; extending the time the certificate of need laws are in effect; amending sections 50-5-101, 50-5-301, 50-5-302, 50-5-304 through 50-5-306, 50-5-309, MCA; and section 13, chapter 329, laws of 1983; and providing an effective date.

ASSUMPTIONS:

1. The number of applications was based on an average of applications from FY82 to FY86 adjusted to reflect the decrease in the number of large applications expected in the 1986 biennium.
2. Fee income to be received under the proposed law is estimated from the following assumptions:
 - a. Minimum fee will be \$500 with 15 applications in this category.
 - b. .3% for applications over minimum with 25 applications in this category with an average of \$1,000,000 per application.
 - c. Fee of \$500 per hearing per applicant with 5 hearings held with an average of 1.5 applicants per hearing.
3. Expenditures are based on the budget adopted for the health planning bureau by the Human Services Appropriation Sub-Committee.

FISCAL IMPACT:

	FY88		FY89	
	Current Law	Proposed Law	Current Law	Proposed Law
<u>Expenditures:</u>				
Personal Services	\$ 0	\$ 174,905	\$ 0	\$ 174,951
Operating Expenses	0	34,530	0	28,951
Capital Outlay	0	591	0	591
TOTAL	\$ 0	\$ 210,026	\$ 0	\$ 204,457
<u>Funding:</u>				
General Fund	\$ 0	\$ 210,026	\$ 0	\$ 204,457
<u>Revenues:</u>				
General Fund	\$ 0	\$ 86,250	\$ 0	\$ 86,250
<u>Net Impact to General Fund</u>		(\$ 123,776)		(\$ 118,207)

NOTE: The health planning bureau FY86 general fund expenditures were \$114,157. Total FY86 expenditures of \$306,786 for the bureau were financed partially by federal funds in FY86.

David L. Hunter DATE 2/19/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Esther Bengtson DATE _____
 ESTHER BENGSTON, PRIMARY SPONSOR

Fiscal Note for SB246, as introduced.

SB 246

Fiscal Note Request, SB246, as introduced.

Form BD-15

Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If SB246 does not pass, the Certificate of Need process would be eliminated and may have an impact on policy decisions made by the Health Facility Authority Board on loaning funds for new services. Certificate of Need is now relied upon to help determine where funds are channeled.

SB 246

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

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SENATE BILL NO. *246*

INTRODUCED BY *Bangston, Stinson, Windsor, Barlow*

BY REQUEST OF THE DEPARTMENT OF HEALTH AND *J. Brown*
ENVIRONMENTAL SCIENCES *John M. Williams & Co*

Wendy Hager *Walter E. Smith* *Bar* *Man* *Ly*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
CLARIFY CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE
FACILITIES; EXTENDING THE TIME THE CERTIFICATE OF NEED LAWS
ARE IN EFFECT; AMENDING SECTIONS 50-5-101, 50-5-301,
50-5-302, 50-5-304 THROUGH 50-5-306, 50-5-309, MCA, AND
SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN
EFFECTIVE DATE."

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. (Temporary) 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,
freestanding 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 person" means the an applicant
for certificate of need, members a member of the public who

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

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

(5) "Batch" means those letters of intent and
~~applications--of-a-specified-category-and-within-a-specified~~
~~region-of-the-state, as established by department--rule,~~ to
seek approval for new beds or major medical equipment that
are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1
month, established by department rule during which letters
of intent ~~for--specified--categories--of--new--institutional~~
~~health--services--and-for-specified-regions-of-the-state-may~~
be to seek approval for new beds or major medical equipment



1 are accumulated pending further processing of all letters of
2 intent within the batch.

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

5 (8) "Capital expenditure" means:

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

10 (b) a lease, donation, or comparable arrangement that
11 would be a capital expenditure if money or any other
12 property of value had changed hands.

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

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

21 (11) "Chemical dependency facility" means a facility
22 whose function is the treatment, rehabilitation, and
23 prevention of the use of any chemical substance, including
24 alcohol, which creates behavioral or health problems and
25 endangers the health, interpersonal relationships, or

1 economic function of an individual or the public health,
2 welfare, or safety.

3 ~~(12)~~(12) "Clinical laboratory" means a facility for the
4 microbiological, serological, chemical, hematological,
5 radiobioassay, cytological, immunohematological,
6 pathological, or other examination of materials derived from
7 the human body for the purpose of providing information for
8 the diagnosis, prevention, or treatment of any disease or
9 assessment of a medical condition.

10 ~~(13)~~(13) "College of American pathologists" means the
11 organization nationally recognized by that name with
12 headquarters in Traverse City, Michigan, that surveys
13 clinical laboratories upon their requests and accredits
14 clinical laboratories that it finds meet its standards and
15 requirements.

16 ~~(14)~~(14) "Comparative review" means a joint review of
17 two or more certificate of need applications ~~within a given~~
18 ~~batch~~ which are determined by the department to be
19 competitive in that the granting of a certificate of need to
20 one of the applicants would substantially prejudice the
21 department's review of the other applications.

22 ~~(15)~~(15) "Construction" means the physical erection of
23 a health care facility and any stage thereof, including
24 ground breaking, or remodeling, replacement, or renovation
25 of an existing health care facility.

1 ~~{15}~~{16} "Department" means the department of health
2 and environmental sciences provided for in Title 2, chapter
3 15, part 21.

4 ~~{16}~~{17} "Federal acts" means federal statutes for the
5 construction of health care facilities.

6 ~~{17}~~{18} "Governmental unit" means the state, a state
7 agency, a county, municipality, or political subdivision of
8 the state, or an agency of a political subdivision.

9 ~~{18}~~{19} "Health care facility" or "facility" means any
10 institution, building, or agency or portion thereof, private
11 or public, excluding federal facilities, whether organized
12 for profit or not, used, operated, or designed to provide
13 health services, medical treatment, or nursing,
14 rehabilitative, or preventive care to any person or persons.
15 The term does not include offices of private physicians or
16 dentists. The term includes but is not limited to ambulatory
17 surgical facilities, health maintenance organizations, home
18 health agencies, hospices, hospitals, infirmaries, kidney
19 treatment centers, long-term care facilities, mental health
20 centers, outpatient facilities, public health centers,
21 rehabilitation facilities, and adult day-care centers.

22 ~~{19}~~{20} "Health maintenance organization" means a
23 public or private organization ~~organized-as-defined-in-42~~
24 ~~H-S-E-300e, as-amended~~ which provides or arranges for
25 health care services to enrollees on a prepaid or other

1 financial basis, either directly through provider employees
2 or through contractual or other arrangements with a provider
3 or group of providers.

4 ~~{20}~~"Health--systems--agency" means an entity which is
5 ~~organized-and-operated-in-the-manner-described-in-42--U-S-E-~~
6 ~~3001-2--and-which-is-capable,-as-determined-by-the-secretary~~
7 ~~of--the--United--States--department--of--health--and--human~~
8 ~~services;-of-performing-each-of-the-functions-described-in~~
9 ~~42-U-S-E-3001-2.~~

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

17 (22) "Hospice" means a coordinated program of home and
18 inpatient health care that provides or coordinates
19 palliative and supportive care to meet the needs of a
20 terminally ill patient and his family arising out of
21 physical, psychological, spiritual, social, and economic
22 stresses experienced during the final stages of illness and
23 dying and that includes formal bereavement programs as an
24 essential component.

25 (23) "Hospital" means a facility providing, by or under

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

12 (24) "Infirmery" means a facility located in a
 13 university, college, government institution, or industry for
 14 the treatment of the sick or injured, with the following
 15 subdefinitions:

16 (a) an "infirmery--A" provides outpatient and
 17 inpatient care;

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

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

25 (26) "Kidney treatment center" means a facility which

1 specializes in treatment of kidney diseases, including
 2 freestanding hemodialysis units.

3 (27) (a) "Long-term care facility" means a facility or
 4 part thereof which provides skilled nursing care,
 5 intermediate nursing care, or intermediate developmental
 6 disability care to a total of two or more persons or
 7 personal care to more than four persons who are not related
 8 to the owner or administrator by blood or marriage. The
 9 term does not include adult foster care licensed under
 10 53-5-303, community homes for the developmentally disabled
 11 licensed under 53-20-305, community homes for physically
 12 disabled persons licensed under 53-19-111, boarding or
 13 foster homes for children licensed under 41-3-1142, hotels,
 14 motels, boardinghouses, roominghouses, or similar
 15 accommodations providing for transients, students, or
 16 persons not requiring institutional health care, or juvenile
 17 and adult correctional facilities operating under the
 18 authority of the department of institutions.

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

23 (c) "Intermediate nursing care" means the provision of
 24 nursing care services, health-related services, and social
 25 services under the supervision of a licensed nurse to

1 patients not requiring 24-hour nursing care.

2 (d) "Intermediate developmental disability care" means
3 the provision of nursing care services, health-related
4 services, and social services for the developmentally
5 disabled, as defined in 53-20-102(4), or persons with
6 related problems.

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

11 (28) "Major medical equipment" means a single unit of
12 medical equipment or a single system of components with
13 related functions which is used to provide medical or other
14 health services and costs a substantial sum of money.

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

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

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

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

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

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

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

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

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

1 (38) "Resident" means a person who is in a long-term
2 care facility for intermediate or personal care.

3 (39) "State health plan" means the plan prepared by the
4 department pursuant to ~~42-U.S.C.-300m-2(a)+(2)~~ to project the
5 need for health care facilities within Montana and approved
6 by the statewide health coordinating council and the
7 governor.

8 50-5-101. (Effective July 1, 1989) Definitions. As
9 used in parts 1 through 4 of this chapter, unless the
10 context clearly indicates otherwise, the following
11 definitions apply:

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

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

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

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

24 (5) "Clinical laboratory" means a facility for the
25 microbiological, serological, chemical, hematological,

1 radiobioassay, cytological, immunohematological,
2 pathological, or other examination of materials derived from
3 the human body for the purpose of providing information for
4 the diagnosis, prevention, or treatment of any disease or
5 assessment of a medical condition.

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

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

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

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

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

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

8 (11) "Health maintenance organization" means a public
 9 or private organization ~~organized as defined in 42 U.S.C.~~
 10 ~~300e, as amended that provides or arranges for health care~~
 11 services to enrollees on a prepaid or other financial basis,
 12 either directly through provider employees or through
 13 contractual or other arrangements with a provider or group
 14 of providers.

15 ~~{12} "Health systems agency" means an entity which is~~
 16 ~~organized and operated in the manner described in 42 U.S.C.~~
 17 ~~300i-2 and which is capable, as determined by the secretary~~
 18 ~~of the United States department of health and human~~
 19 ~~services, of performing each of the functions described in~~
 20 ~~42 U.S.C. 300i-2.~~

21 {13}(12) "Home health agency" means a public agency or
 22 private organization or subdivision thereof which is engaged
 23 in providing home health services to individuals in the
 24 places where they live. Home health services must include
 25 the services of a licensed registered nurse and at least one

1 other therapeutic service and may include additional support
 2 services.

3 {14}(13) "Hospice" means a coordinated program of home
 4 and inpatient health care that provides or coordinates
 5 palliative and supportive care to meet the needs of a
 6 terminally ill patient and his family arising out of
 7 physical, psychological, spiritual, social, and economic
 8 stresses experienced during the final stages of illness and
 9 dying and that includes formal bereavement programs as an
 10 essential component.

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

23 {16}(15) "Infirmiry" means a facility located in a
 24 university, college, government institution, or industry for
 25 the treatment of the sick or injured, with the following

1 subdefinitions:

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

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

5 †17†(16) "Joint commission on accreditation of
6 hospitals" means the organization nationally recognized by
7 that name with headquarters in Chicago, Illinois, that
8 surveys health care facilities upon their requests and
9 grants accreditation status to any health care facility that
10 it finds meets its standards and requirements.

11 †18†(17) "Kidney treatment center" means a facility
12 which specializes in treatment of kidney diseases, including
13 freestanding hemodialysis units.

14 †9†(18) (a) "Long-term care facility" means a facility
15 or part thereof which provides skilled nursing care,
16 intermediate nursing care, or intermediate developmental
17 disability care to a total of two or more persons or
18 personal care to more than four persons who are not related
19 to the owner or administrator by blood or marriage. The
20 term does not include adult foster care licensed under
21 53-5-303, community homes for the developmentally disabled
22 licensed under 53-20-305, community homes for physically
23 disabled persons licensed under 53-19-111, boarding or
24 foster homes for children licensed under 41-3-1142, hotels,
25 motels, boardinghouses, roominghouses, or similar

1 accommodations providing for transients, students, or
2 persons not requiring institutional health care, or juvenile
3 and adult correctional facilities operating under the
4 authority of the department of institutions.

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

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

13 (d) "Intermediate developmental disability care" means
14 the provision of nursing care services, health-related
15 services, and social services for the developmentally
16 disabled, as defined in 53-20-102(4), or persons with
17 related problems.

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

22 †20†(19) "Mental health center" means a facility
23 providing services for the prevention or diagnosis of mental
24 illness, the care and treatment of mentally ill patients or
25 the rehabilitation of such persons, or any combination of

1 these services.

2 †21†(20) "Nonprofit health care facility" means a
3 health care facility owned or operated by one or more
4 nonprofit corporations or associations.

5 †22†(21) "Observation bed" means a bed occupied for not
6 more than 6 hours by a patient recovering from surgery or
7 other treatment.

8 †23†(22) "Offer" means the holding out by a health care
9 facility that it can provide specific health services.

10 †24†(23) "Outpatient facility" means a facility,
11 located in or apart from a hospital, providing, under the
12 direction of a licensed physician, either diagnosis or
13 treatment, or both, to ambulatory patients in need of
14 medical, surgical, or mental care. An outpatient facility
15 may have observation beds.

16 †25†(24) "Patient" means an individual obtaining
17 services, including skilled nursing care, from a health care
18 facility.

19 †26†(25) "Person" means any individual, firm,
20 partnership, association, organization, agency, institution,
21 corporation, trust, estate, or governmental unit, whether
22 organized for profit or not.

23 †27†(26) "Public health center" means a publicly owned
24 facility providing health services, including laboratories,
25 clinics, and administrative offices.

1 †28†(27) "Rehabilitation facility" means a facility
2 which is operated for the primary purpose of assisting in
3 the rehabilitation of disabled persons by providing
4 comprehensive medical evaluations and services,
5 psychological and social services, or vocational evaluation
6 and training or any combination of these services and in
7 which the major portion of the services is furnished within
8 the facility.

9 †29†(28) "Resident" means a person who is in a
10 long-term care facility for intermediate or personal care.

11 †30†(29) "State health plan" means the plan prepared by
12 the department pursuant to 42-U.S.C.-300m-2(a)†2† to project
13 the need for health care facilities within Montana and
14 approved by the statewide health coordinating council and
15 the governor."

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

17 "50-5-301. (Temporary) When certificate of need is
18 required -- definitions. (1) Unless a person has submitted
19 an application for and is the holder of a certificate of
20 need granted by the department, he may not initiate any of
21 the following:

22 (a) the incurring of an obligation by or on behalf of
23 a health care facility for any capital expenditure, other
24 than to acquire an existing health care facility or to
25 replace major medical equipment with equipment performing

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

11 (b) a change in the bed capacity of a health care
 12 facility by 10 through an increase in the number of beds or
 13 10%, whichever is less, in any 2-year period through:

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

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

18 ~~(iii) a relocation of beds from one physical health~~
 19 ~~care facility or site to another, unless:~~

20 (i) the number of beds involved is 10 or less or 10%
 21 or less of the licensed beds (if fractional, rounded down to
 22 the nearest whole number), whichever figure is smaller, in
 23 any 2-year period;

24 (ii) a letter of intent is submitted to the department;
 25 and

1 (iii) the department determines the proposal will not
 2 significantly increase the cost of care provided or exceed
 3 the bed need projected in the state health plan;

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

10 (d) the acquisition by any person of major medical
 11 equipment, provided such acquisition would have required a
 12 certificate of need pursuant to subsection (1)(a) or (1)(c)
 13 of this section if it had been made by or on behalf of a
 14 health care facility;

15 (e) the incurring of an obligation for a capital
 16 expenditure by any person or persons to acquire 50% or more
 17 of an existing health care facility if unless:

18 (i) the person ~~has failed to submit the notice~~ submits
 19 the letter of intent required by 50-5-302(2); or and

20 (ii) the department finds ~~within 30 days after it~~
 21 ~~receives the notice of intent required by 50-5-302(3)~~ that
 22 the acquisition will ~~result in a change in the services or~~
 23 ~~not significantly increase the cost of care provided or~~
 24 increase bed capacity of the facility;

25 (f) the construction, development, or other

1 establishment of a health care facility which is being
2 replaced or which did not previously exist or which is being
3 replaced, or, by any person, including another type of
4 health care facility.

5 (g) the expansion of the geographical service area of
6 a home health agency; or

7 (h) the use of hospital beds to provide services to
8 patients or residents needing only skilled nursing care,
9 intermediate nursing care, or intermediate developmental
10 disability care, as those levels of care are defined in
11 50-5-101.

12 (2) For purposes of subsection (1)(b), a change in bed
13 capacity occurs on the date new or relocated beds are
14 licensed pursuant to part 2 of this chapter and the date a
15 final decision is made to grant a certificate of need for
16 new or relocated beds, unless the certificate of need
17 expires pursuant to 50-5-305.

18 (2)(3) For purposes of this section part, the
19 following definitions apply:

20 (a) "Health care facility" or "facility" means a
21 nonfederal ambulatory surgical facility, home health agency,
22 hospital, long-term care facility, mental health center with
23 inpatient services, inpatient chemical dependency facility,
24 rehabilitation facility with inpatient services, or personal
25 care facility.

1 (b) (i) "Long-term care facility" means an entity
2 which provides skilled nursing care, intermediate nursing
3 care, or intermediate developmental disability care, as
4 defined in 50-5-101, to a total of two or more persons.

5 (ii) The term does not include adult foster care
6 licensed under 53-5-303; community homes for the
7 developmentally disabled licensed under 53-20-305; community
8 homes for physically disabled persons licensed under
9 53-19-111; boarding or foster homes for children licensed
10 under 41-3-1142; hotels, motels, boardinghouses,
11 roominghouses, or similar accommodations providing for
12 transients, students, or persons not requiring institutional
13 health care; or juvenile and adult correctional facilities
14 operating under the authority of the department of
15 institutions.

16 (c) "obligation Obligation for capital expenditure"
17 does not include the authorization of bond sales or the
18 offering or sale of bonds pursuant to the state long-range
19 building program under Title 17, chapter 5, part 4, and
20 Title 18, chapter 2, part 17.

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

25 (3) ~~A proposed change in a project associated with a~~

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

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

17 (d) "Personal care facility" means an entity which
 18 provides services and care which do not require nursing
 19 skills to more than four persons who are not related to the
 20 owner or administrator by blood or marriage and who need
 21 some assistance in performing the activities of everyday
 22 living. The term does not include those entities excluded
 23 from the definition of "long-term care facility" in
 24 subsection (b).

25 (5)(a)(4) Expenditure thresholds for certificate of

1 need review are established as follows:

2 (i)(a) For acquisition of equipment and the
 3 construction of any building necessary to house the
 4 equipment, the expenditure threshold is \$500,000 \$750,000.

5 (ii)(b) For construction of health care facilities,
 6 the expenditure threshold is \$750,000 \$1,500,000.

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

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

12 "50-5-302. (Temporary) Notice of intent -- application
 13 and review process. (1) The department may adopt rules
 14 including but not limited to rules for:

15 (a) the form and content of notices letters of intent
 16 and applications;

17 (b) the scheduling and consolidation of reviews of
 18 similar proposals;

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

20 (i) does not significantly affect the cost or use of
 21 health care;

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

1 (iii) is necessary to comply with licensure or
2 certification standards; or

3 ~~(iv) has been approved by the legislature pursuant to~~
4 ~~the long-range building program under Title 17, chapter 5,~~
5 ~~part 4, and Title 18, chapter 2, part 1, providing the~~
6 ~~legislative findings accompanying such approval give~~
7 ~~consideration to the criteria of 50-5-304, and subject to~~
8 ~~the provisions of 50-5-309;~~

9 (iv) would add a health service that is subject to a
10 certificate of need review under 50-5-301(1)(c);

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

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds and major
15 medical equipment, challenge periods, and the circumstances
16 under which applications from different batches may be
17 comparatively reviewed; establishment of new services; and
18 replacement of health care facilities; and

19 (f) the circumstances under which a certificate of
20 need may be approved for the use of hospital beds to provide
21 skilled nursing care, intermediate nursing care, or
22 intermediate developmental disability care to patients or
23 residents needing only that level of care.

24 (2) At least 30 days before any person or persons
25 acquires acquire or enters enter into a contract to acquire

1 50% or more of an existing health care facility, the person
2 they shall submit to the department and the appropriate
3 health systems agency a notice of his letter noting intent
4 to acquire the facility and of the services to be offered in
5 the facility and its bed capacity.

6 (3) Any person intending to initiate an activity for
7 which a certificate of need is required shall submit a
8 letter of intent to the department. ~~The letter of intent~~
9 ~~must be placed in the appropriate batch; if any. Any person~~
10 ~~who applies for comparative review by submitting a challenge~~
11 ~~letter of intent during the challenge period immediately~~
12 ~~following the batch must submit an application within 30~~
13 ~~days after the close of the challenge period.~~

14 (4) If the proposal is for new beds or major medical
15 equipment, the department shall place the letter of intent
16 in the appropriate batch unless, in the case of beds, the
17 proposal is determined to be exempt from review.

18 (5) Any person who desires comparative review with a
19 proposal in a batch must submit a challenge letter of intent
20 at least by the end of the challenge period following the
21 batching period for that batch.

22 (6) The department shall give to each person
23 submitting a letter of intent written notice of the
24 deadline for submission of an application for certificate of
25 need, which will be no less than 30 days after the notice is

1 sent.

2 ~~(4)(7)~~ Within ~~15--calendar~~ 20 working days after
 3 receipt of the an application, the department shall
 4 determine whether it is complete ~~if after the 15 days~~, and
 5 if the application is found incomplete, ~~the department~~ shall
 6 send a written request to the applicant for the necessary
 7 additional information within 5 working days. Upon receipt
 8 of the additional information from the applicant, the
 9 department shall have 15 working days to determine if the
 10 application is complete and to send a notice to the
 11 applicant that the application is complete or incomplete.
 12 ~~If the department fails to make a determination as to the~~
 13 ~~completeness of the application within the prescribed 15-day~~
 14 ~~period, the application shall be deemed to be complete, if~~
 15 ~~the applicant fails to submit the necessary additional~~
 16 ~~information requested by the department by the deadline as~~
 17 ~~prescribed by department rules for considering such reviews,~~
 18 ~~a new letter of intent and application must be submitted and~~
 19 ~~the application will be dropped from the current batch. The~~
 20 request for added information may be repeated as long as the
 21 information submitted remains incomplete, and the department
 22 shall have 15 working days after each submission to send a
 23 notice that the application is complete or incomplete.

24 (8) If a proposal is to undergo comparative review
 25 with another proposal but the applicant fails to submit the

1 necessary additional information requested by the department
 2 by the deadline prescribed by department rules, the
 3 application must be dropped from the current batch and
 4 assigned to the next batching period.

5 (9) If the department fails to send the notices within
 6 the periods prescribed in subsection (7), the application is
 7 considered to be complete on the last day of the time period
 8 during which the notice should have been sent.

9 ~~(5)(10)~~ After an application is designated complete,
 10 immediate notification must be sent to the applicant and all
 11 other affected persons regarding the department's projected
 12 time schedule for review of the application. The review
 13 period for an application may be no longer than 60 90
 14 calendar days after the notice is sent ~~unless a hearing is~~
 15 ~~required, in which case the review must be completed within~~
 16 ~~120 days after the notice is sent~~ or, if a challenging
 17 application has been submitted as provided in subsection ~~(3)~~
 18 (5), within 120 90 days after the notice has been sent for
 19 all such challenging applications. A longer period is
 20 permitted with the consent of all affected applicants. ~~All~~
 21 ~~completed applications pertaining to similar types of~~
 22 ~~services, facilities, or equipment affecting the same health~~
 23 ~~service area may be considered in relation to each other.~~
 24 ~~During the review period a public hearing may be held if~~
 25 ~~requested by an affected person or when considered~~

1 appropriate-by-the--department;---Such--a--hearing--must--be
2 conducted---pursuant---to---the---provisions---for--informat
3 proceedings-of-the-Montana-Administrative-Procedure-Act:

4 (11) During the review period a public hearing may be
5 held if requested by an affected person or when considered
6 appropriate by the department.

7 (12) Each completed application may be considered in
8 relation to other applications pertaining to similar types
9 of facilities or equipment affecting the same health service
10 area.

11 ~~(6)~~(13) The department shall, after considering all
12 comments received during the review period, issue a
13 certificate of need, with or without conditions, or deny the
14 application. The department shall notify the applicant and
15 affected persons of its decision within 5 working days after
16 expiration of the review period.

17 (14) If the department fails to reach a decision and
18 notify the applicant of its decision within the deadlines
19 established in this section and if that delay constitutes an
20 abuse of the department's discretion, the applicant may
21 apply to district court for a writ of mandamus to force the
22 department to render a decision."

23 Section 4. Section 50-5-304, MCA, is amended to read:
24 "50-5-304. (Temporary) Review criteria, required
25 findings, and standards. ~~(1)~~ The department shall by rule

1 promulgate and utilize, as appropriate, specific criteria
2 for reviewing certificate of need applications under this
3 chapter, including but not limited to the following
4 considerations and required findings:

5 ~~(a)~~(1) the relationship-of-the-health-services degree
6 to which the proposal being reviewed to--the--applicable
7 health--systems--plan, is consistent with the current state
8 health plan,--and--annual--implementation--plan---developed
9 pursuant--to--Title--XV-of-the-Public-Health-Service-Act,--as
10 amended;

11 ~~(b)~~--the--relationship--of--services--reviewed--to--the
12 long-range-development-plan,--if--any,--of--the--person--providing
13 or-proposing-the-services;

14 ~~(c)~~(2) the need that the population served or to be
15 served by the services proposal has for the services;

16 ~~(d)~~(3) the availability of less costly
17 quality-equivalent or more effective alternative methods of
18 providing such services;

19 ~~(e)~~(4) the immediate and long-term financial
20 feasibility of the proposal as well as the probable impact
21 of the proposal on the costs of and charges for providing
22 health services by the person proposing the health service;

23 ~~(f)~~(5) the relationship and financial impact of the
24 services proposed to be provided to the existing health care
25 system of the area in which such services are proposed to be

1 provided; and

2 ~~(6)~~ the consistency of the proposal with joint
3 planning efforts by health care providers in the area;

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

9 ~~(h)(8)~~ the relationship, including the organizational
10 relationship, of the health services proposed to be provided
11 to ancillary or support services;

12 ~~(i)--the--special--needs--and--circumstances--of--those~~
13 ~~entities--which--provide--a--substantial--portion--of--their~~
14 ~~services--or--resources--or--both--to--individuals--not--residing~~
15 ~~in--the--health--service--areas--in--which--the--entities--are~~
16 ~~located--or--in--adjacent--health--service--areas--Such--entities~~
17 ~~may--include--medical--and--other--health--profession--schools--;~~
18 ~~multidisciplinary--clinics--and--specialty--centers--;~~

19 ~~(j)--the--special--needs--and--circumstances--of--health~~
20 ~~maintenance--organizations--for--which--assistance--may--be~~
21 ~~provided--under--Title--XIII--of--the--Public--Health--Service--Act--.~~
22 ~~Such--needs--and--circumstances--include--the--needs--of--and--costs~~
23 ~~to--members--and--projected--members--of--the--health--maintenance~~
24 ~~organization--in--obtaining--health--services--and--the--potential~~
25 ~~for--a--reduction--in--the--use--of--inpatient--care--in--the~~

1 ~~community--through--an--extension--of--preventive--health--services~~
2 ~~and--the--provision--of--more--systematic--and--comprehensive~~
3 ~~health--services--;~~

4 ~~(k)--the--special--needs--and--circumstances--of--biomedical~~
5 ~~and--behavioral--research--projects--which--are--designed--to--meet~~
6 ~~a--national--need--and--for--which--local--conditions--offer--special~~
7 ~~advantages--;~~

8 ~~(l)(9)~~ in the case of a construction project, the
9 costs and methods of the proposed construction, including
10 the costs and methods of energy provision, and the probable
11 impact of the construction project reviewed on the costs of
12 providing health services by the person proposing the
13 construction project; and

14 ~~(m)(10)~~ the distance, convenience, cost of
15 transportation, and accessibility of health services for
16 persons who live outside urban areas in relation to the
17 proposal; and

18 ~~(n)--any--other--criteria--required--findings--or~~
19 ~~requirements--for--reviewing--certificate--of--need--applications~~
20 ~~cited--in--the--federal--regulations--found--in--Title--42--CFR--;~~
21 ~~Part--123--as--amended--;~~

22 ~~(2)--if--an--application--for--new--long--term--care--beds--will~~
23 ~~involve--new--or--increased--use--of--medicaid--funds--and--the~~
24 ~~department--of--social--and--rehabilitation--services--determines~~
25 ~~that--such--use--would--cause--the--state--medicaid--budget--for~~

1 long-term-care-facilities-to-be-exceeded, the department of
 2 health-and-environmental-sciences-may-impose-conditions-on-a
 3 certificate-of-need-for-new-long-term-care--beds,--including
 4 limitation--on--the--number--of--approved--beds-which-may-be
 5 certified-for-medicaid-patients,--Availability--of--medicaid
 6 funding-may-be-the-basis-for-imposing-conditions-but-may-not
 7 be--the-sole-basis-for-denial-of-a-certificate-of-need,--The
 8 department-may--adopt--rules--for--the--imposition--of--such
 9 conditions,--but--only-if-the-secretary-of-the-United-States
 10 department-of-health-and-human--services--has--approved--an
 11 amendment--to-the-state's-medicaid-plan,--adopted-pursuant-to
 12 42--U.S.C.--1396a,--allowing--for--the--imposition--of--such
 13 conditions."

14 Section 5. Section 50-5-305, MCA, is amended to read:
 15 "50-5-305. (Temporary) Period of validity of approved
 16 application. (1) Unless an extension is granted pursuant to
 17 subsection ~~(2)~~ (3), a certificate of need shall expire:

18 (a) 1 year after its issuance the decision to issue it
 19 is final if the applicant has not commenced construction on
 20 a project requiring construction or has not incurred an
 21 enforceable capital expenditure commitment for a project not
 22 requiring construction;

23 (b) 1 year from after the date the project is
 24 commenced plus the estimated period of time for completion
 25 as shown in the application if the approved project is not

1 complete; or

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

6 (2) For purposes of subsection (1)(a), if a
 7 reconsideration hearing is granted or an appeal filed under
 8 50-5-306, the final decision will be that following the
 9 hearing or resolving the appeal.

10 ~~(2)~~(3) The holder of an unexpired certificate of need
 11 may apply to the department to extend the term of the
 12 certificate of need for one additional period not to exceed
 13 6 months. The department may grant such an extension upon
 14 the applicant's demonstrating good cause as defined by
 15 department rule.

16 ~~(3)~~(4) The holder of an unexpired certificate of need
 17 shall report to the department in writing on the status of
 18 his project at the end of each 90-day 6-month period after
 19 being granted a certificate of need until completion of the
 20 project for which the certificate of need was issued."

21 Section 6. Section 50-5-306, MCA, is amended to read:
 22 "50-5-306. (Temporary) Right to hearing and appeal.

23 (1) An affected person may request the department to hold a
 24 public hearing and to reconsider its decision. The
 25 department shall grant the request if the affected person

1 submits the request in writing ~~showing good cause as defined~~
 2 ~~in rules adopted by the department~~ and if the request is
 3 received by the department within ~~20~~ 30 calendar days after
 4 the initial decision is announced.

5 ~~(2) The public hearing to reconsider shall~~ must be
 6 ~~held, if warranted or required,~~ within ~~20~~ 30 calendar days
 7 after ~~its request~~ the request is received unless the
 8 requestor agrees to waive the time limit.

9 ~~(3) The reconsideration hearing must be conducted~~
 10 pursuant to the provisions for informal proceedings of the
 11 Montana Administrative Procedure Act.

12 ~~(4) The department shall make its final decision and~~
 13 serve the appellant with written findings of fact and
 14 conclusions of law in support thereof of the decision within
 15 30 days after the conclusion of the reconsideration hearing.

16 ~~(5) Any affected person may appeal the department's~~
 17 final decision to the district court as provided in Title 2,
 18 chapter 4, part 7.

19 ~~(6) If a petition to appeal the decision is filed, the~~
 20 decision must be stayed pending resolution of the appeal by
 21 the courts.

22 ~~(7) The department may by rule prescribe in greater~~
 23 detail the hearing and appellate procedures."

24 Section 7. Section 50-5-309, MCA, is amended to read:

25 "50-5-309. (Temporary) Exemptions from certificate of

1 need review. ~~(1) Except as provided in subsection (2), the~~
 2 ~~following are exempt from certificate of need review:~~

3 ~~(a) expenditures by a health care facility for~~
 4 ~~nonmedical and nonclinical facilities and services unrelated~~
 5 ~~to the operation of the health care facility if a letter of~~
 6 ~~intent is submitted pursuant to 50-5-302 at least 30 days~~
 7 ~~prior to incurring an obligation for capital expenditures to~~
 8 ~~enable the department to determine whether the expenditures~~
 9 ~~are exempt;~~

10 ~~(b) a project proposed by an agency of state~~
 11 ~~government that has been approved by the legislature~~
 12 ~~pursuant to the long-range building program under Title 17,~~
 13 ~~chapter 5, part 4, and Title 18, chapter 2, part 1, is~~
 14 exempt from certificate of need review.

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

1 ~~adoption-of-the-rule-~~"

2 NEW SECTION. Section 8. Fees. (1) There is no fee for
3 filing a letter of intent.

4 (2) An application for certificate of need approval
5 must be accompanied by a fee equaling 0.3% of the capital
6 expenditure projected in the application, except that the
7 fee may be no less than \$500.

8 (3) With the exception of the department and an
9 applicant whose proposal is approved and who does not
10 request the hearing, each affected person who is a party in
11 a reconsideration hearing held pursuant to 50-5-306(1)
12 shall pay the department \$500.

13 (4) Fees collected under this section must be
14 deposited in the state general fund.

15 Section 9. Section 13, Chapter 329, Laws of 1983, is
16 amended to read:

17 "Section 13. Effective dates. (1) This act is
18 effective on passage and approval, with delayed effective
19 dates.

20 (2) On July 1, ~~1987~~ 1989, 50-5-301, 50-5-302, and
21 50-5-304 through ~~50-5-308~~ 50-5-309, MCA, and ~~sections--8~~
22 ~~through--10~~ section 9 hereof are repealed unless reenacted by
23 the legislature.

24 (3) On July 1, ~~1987~~ 1989, 50-5-101, MCA, is amended by
25 deleting subsections (3), (5), (6), ~~(9)~~ (8) through (10),

1 ~~(13)~~ (14), (15), and ~~(27)~~ (28) unless reenacted by the
2 legislature.

3 (4) On July 1, ~~1987~~ 1989, 50-5-106, MCA, is amended to
4 read as follows, unless reenacted by the legislature:

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

24 NEW SECTION. Section 10. Codification instruction.
25 Section 8 is intended to be codified as an integral part of

1 Title 50, chapter 5, part 3, and the provisions of Title 50,
2 chapter 5, part 3, apply to section 8.

3 NEW SECTION. Section 11. Extension of authority. Any
4 existing authority of the department of health and
5 environmental sciences to make rules on the subject of the
6 provisions of this act is extended to the provisions of this
7 act.

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

12 NEW SECTION. Section 13. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 14. Effective date. This act is
19 effective June 30, 1987.

-End-

1 *Senate* BILL NO. *246* *Keating*
 2 INTRODUCED BY *Bangston Hines Wenden Bardone*
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND *D. Brown*
 4 ENVIRONMENTAL SCIENCES *M. Hanson* *Polly M. Williams & Jk*
 5 *Wendy Hager* *Stanko E. Smith* *Bradley*
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND *Manahan*
 7 CLARIFY CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE *Lynch*
 8 FACILITIES; EXTENDING THE TIME THE CERTIFICATE OF NEED LAWS
 9 ARE IN EFFECT; AMENDING SECTIONS 50-5-101, 50-5-301,
 10 50-5-302, 50-5-304 THROUGH 50-5-306, 50-5-309, MCA, AND
 11 SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN
 12 EFFECTIVE DATE."

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. (Temporary) Definitions. As used in parts 1
 17 through 4 of this chapter, unless the context clearly
 18 indicates otherwise, the following definitions apply:
 19 (1) "Accreditation" means a designation of approval.
 20 (2) "Adult day-care center" means a facility,
 21 freestanding 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 person" means the an applicant
 25 for certificate of need, members a member of the public who

1 are--to will be served by the proposal, a health care
 2 facilities facility located in the geographic area affected
 3 by the application, agencies an agency which establish
 4 establishes rates for health care facilities, a third-party
 5 payers payer who reimburse reimburses health care facilities
 6 in the area affected by the proposal, and-agencies or an
 7 agency which plan-or-assist plans or assists in planning for
 8 such facilities,--including-any-agency-qualifying-as-a-health
 9 systems-agency-pursuant-to-Title-XV--of--the--Public--Health
 10 Service-Act.

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

16 (5) "Batch" means those letters of intent and
 17 applications--of-a-specified-category-and-within-a-specified
 18 region-of-the-state,-as-established-by-department--rule, to
 19 seek approval for new beds or major medical equipment that
 20 are accumulated during a single batching period.

21 (6) "Batching period" means a period, not exceeding 1
 22 month, established by department rule during which letters
 23 of intent for--specified--categories--of--new--institutional
 24 health--services--and-for-specified-regions-of-the-state-may
 25 be to seek approval for new beds or major medical equipment



1 are accumulated pending further processing of all letters of
2 intent within the batch.

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

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

10 (b) a lease, donation, or comparable arrangement that
11 would be a capital expenditure if money or any other
12 property of value had changed hands.

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

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

21 (11) "Chemical dependency facility" means a facility
22 whose function is the treatment, rehabilitation, and
23 prevention of the use of any chemical substance, including
24 alcohol, which creates behavioral or health problems and
25 endangers the health, interpersonal relationships, or

1 economic function of an individual or the public health,
2 welfare, or safety.

3 ~~(12)~~(12) "Clinical laboratory" means a facility for the
4 microbiological, serological, chemical, hematological,
5 radiobioassay, cytological, immunohematological,
6 pathological, or other examination of materials derived from
7 the human body for the purpose of providing information for
8 the diagnosis, prevention, or treatment of any disease or
9 assessment of a medical condition.

10 ~~(13)~~(13) "College of American pathologists" means the
11 organization nationally recognized by that name with
12 headquarters in Traverse City, Michigan, that surveys
13 clinical laboratories upon their requests and accredits
14 clinical laboratories that it finds meet its standards and
15 requirements.

16 ~~(14)~~(14) "Comparative review" means a joint review of
17 two or more certificate of need applications within-a-given
18 batch which are determined by the department to be
19 competitive in that the granting of a certificate of need to
20 one of the applicants would substantially prejudice the
21 department's review of the other applications.

22 ~~(15)~~(15) "Construction" means the physical erection of
23 a health care facility and any stage thereof, including
24 ground breaking, or remodeling, replacement, or renovation
25 of an existing health care facility.

1 ~~(15)~~(16) "Department" means the department of health
2 and environmental sciences provided for in Title 2, chapter
3 15, part 21.

4 ~~(16)~~(17) "Federal acts" means federal statutes for the
5 construction of health care facilities.

6 ~~(17)~~(18) "Governmental unit" means the state, a state
7 agency, a county, municipality, or political subdivision of
8 the state, or an agency of a political subdivision.

9 ~~(18)~~(19) "Health care facility" or "facility" means any
10 institution, building, or agency or portion thereof, private
11 or public, excluding federal facilities, whether organized
12 for profit or not, used, operated, or designed to provide
13 health services, medical treatment, or nursing,
14 rehabilitative, or preventive care to any person or persons.
15 The term does not include offices of private physicians or
16 dentists. The term includes but is not limited to ambulatory
17 surgical facilities, health maintenance organizations, home
18 health agencies, hospices, hospitals, infirmaries, kidney
19 treatment centers, long-term care facilities, mental health
20 centers, outpatient facilities, public health centers,
21 rehabilitation facilities, and adult day-care centers.

22 ~~(19)~~(20) "Health maintenance organization" means a
23 public or private organization ~~organized-as-defined-in-42~~
24 ~~U.S.C.-300e, as amended~~ which provides or arranges for
25 health care services to enrollees on a prepaid or other

1 financial basis, either directly through provider employees
2 or through contractual or other arrangements with a provider
3 or group of providers.

4 ~~(20) "Health systems agency" means an entity which is~~
5 ~~organized-and-operated-in-the-manner-described-in-42-U.S.C.~~
6 ~~300i-2--and-which-is-capable, as determined by the secretary~~
7 ~~of--the--United--States--department--of--health--and--human~~
8 ~~services,--of--performing--each--of--the--functions--described--in~~
9 ~~42-U.S.C.-300i-2.~~

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

17 (22) "Hospice" means a coordinated program of home and
18 inpatient health care that provides or coordinates
19 palliative and supportive care to meet the needs of a
20 terminally ill patient and his family arising out of
21 physical, psychological, spiritual, social, and economic
22 stresses experienced during the final stages of illness and
23 dying and that includes formal bereavement programs as an
24 essential component.

25 (23) "Hospital" means a facility providing, by or under

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

12 (24) "Infirmery" means a facility located in a
 13 university, college, government institution, or industry for
 14 the treatment of the sick or injured, with the following
 15 subdefinitions:

16 (a) an "infirmery--A" provides outpatient and
 17 inpatient care;

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

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

25 (26) "Kidney treatment center" means a facility which

1 specializes in treatment of kidney diseases, including
 2 freestanding hemodialysis units.

3 (27) (a) "Long-term care facility" means a facility or
 4 part thereof which provides skilled nursing care,
 5 intermediate nursing care, or intermediate developmental
 6 disability care to a total of two or more persons or
 7 personal care to more than four persons who are not related
 8 to the owner or administrator by blood or marriage. The
 9 term does not include adult foster care licensed under
 10 53-5-303, community homes for the developmentally disabled
 11 licensed under 53-20-305, community homes for physically
 12 disabled persons licensed under 53-19-111, boarding or
 13 foster homes for children licensed under 41-3-1142, hotels,
 14 motels, boardinghouses, roominghouses, or similar
 15 accommodations providing for transients, students, or
 16 persons not requiring institutional health care, or juvenile
 17 and adult correctional facilities operating under the
 18 authority of the department of institutions.

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

23 (c) "Intermediate nursing care" means the provision of
 24 nursing care services, health-related services, and social
 25 services under the supervision of a licensed nurse to

1 patients not requiring 24-hour nursing care.

2 (d) "Intermediate developmental disability care" means
3 the provision of nursing care services, health-related
4 services, and social services for the developmentally
5 disabled, as defined in 53-20-102(4), or persons with
6 related problems.

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

11 (28) "Major medical equipment" means a single unit of
12 medical equipment or a single system of components with
13 related functions which is used to provide medical or other
14 health services and costs a substantial sum of money.

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

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

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

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

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

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

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

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

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

1 (38) "Resident" means a person who is in a long-term
2 care facility for intermediate or personal care.

3 (39) "State health plan" means the plan prepared by the
4 department pursuant to ~~42-U.S.C.-300m-2(a)+2~~ to project the
5 need for health care facilities within Montana and approved
6 by the statewide health coordinating council and the
7 governor.

8 50-5-101. (Effective July 1, 1989) Definitions. As
9 used in parts 1 through 4 of this chapter, unless the
10 context clearly indicates otherwise, the following
11 definitions apply:

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

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

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

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

24 (5) "Clinical laboratory" means a facility for the
25 microbiological, serological, chemical, hematological,

1 radiobioassay, cytological, immunohematological,
2 pathological, or other examination of materials derived from
3 the human body for the purpose of providing information for
4 the diagnosis, prevention, or treatment of any disease or
5 assessment of a medical condition.

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

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

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

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

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

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

8 (11) "Health maintenance organization" means a public
 9 or private organization ~~organized as defined in 42-U.S.C.~~
 10 ~~300e, as amended~~ that provides or arranges for health care
 11 services to enrollees on a prepaid or other financial basis,
 12 either directly through provider employees or through
 13 contractual or other arrangements with a provider or group
 14 of providers.

15 ~~{12} "Health systems agency" means an entity which is~~
 16 ~~organized and operated in the manner described in 42-U.S.C.~~
 17 ~~300i-2 and which is capable, as determined by the secretary~~
 18 ~~of the United States department of health and human~~
 19 ~~services, of performing each of the functions described in~~
 20 ~~42-U.S.C. 300i-2.~~

21 {13}{12} "Home health agency" means a public agency or
 22 private organization or subdivision thereof which is engaged
 23 in providing home health services to individuals in the
 24 places where they live. Home health services must include
 25 the services of a licensed registered nurse and at least one

1 other therapeutic service and may include additional support
 2 services.

3 {14}{13} "Hospice" means a coordinated program of home
 4 and inpatient health care that provides or coordinates
 5 palliative and supportive care to meet the needs of a
 6 terminally ill patient and his family arising out of
 7 physical, psychological, spiritual, social, and economic
 8 stresses experienced during the final stages of illness and
 9 dying and that includes formal bereavement programs as an
 10 essential component.

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

23 {16}{15} "Infirmiry" means a facility located in a
 24 university, college, government institution, or industry for
 25 the treatment of the sick or injured, with the following

1 subdefinitions:

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

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

5 †17†(16) "Joint commission on accreditation of
6 hospitals" means the organization nationally recognized by
7 that name with headquarters in Chicago, Illinois, that
8 surveys health care facilities upon their requests and
9 grants accreditation status to any health care facility that
10 it finds meets its standards and requirements.

11 †18†(17) "Kidney treatment center" means a facility
12 which specializes in treatment of kidney diseases, including
13 freestanding hemodialysis units.

14 †19†(18) (a) "Long-term care facility" means a facility
15 or part thereof which provides skilled nursing care,
16 intermediate nursing care, or intermediate developmental
17 disability care to a total of two or more persons or
18 personal care to more than four persons who are not related
19 to the owner or administrator by blood or marriage. The
20 term does not include adult foster care licensed under
21 53-5-303, community homes for the developmentally disabled
22 licensed under 53-20-305, community homes for physically
23 disabled persons licensed under 53-19-111, boarding or
24 foster homes for children licensed under 41-3-1142, hotels,
25 motels, boardinghouses, roominghouses, or similar

1 accommodations providing for transients, students, or
2 persons not requiring institutional health care, or juvenile
3 and adult correctional facilities operating under the
4 authority of the department of institutions.

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

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

13 (d) "Intermediate developmental disability care" means
14 the provision of nursing care services, health-related
15 services, and social services for the developmentally
16 disabled, as defined in 53-20-102(4), or persons with
17 related problems.

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

22 †20†(19) "Mental health center" means a facility
23 providing services for the prevention or diagnosis of mental
24 illness, the care and treatment of mentally ill patients or
25 the rehabilitation of such persons, or any combination of

1 these services.

2 ~~(21)~~(20) "Nonprofit health care facility" means a
3 health care facility owned or operated by one or more
4 nonprofit corporations or associations.

5 ~~(22)~~(21) "Observation bed" means a bed occupied for not
6 more than 6 hours by a patient recovering from surgery or
7 other treatment.

8 ~~(23)~~(22) "Offer" means the holding out by a health care
9 facility that it can provide specific health services.

10 ~~(24)~~(23) "Outpatient facility" means a facility,
11 located in or apart from a hospital, providing, under the
12 direction of a licensed physician, either diagnosis or
13 treatment, or both, to ambulatory patients in need of
14 medical, surgical, or mental care. An outpatient facility
15 may have observation beds.

16 ~~(25)~~(24) "Patient" means an individual obtaining
17 services, including skilled nursing care, from a health care
18 facility.

19 ~~(26)~~(25) "Person" means any individual, firm,
20 partnership, association, organization, agency, institution,
21 corporation, trust, estate, or governmental unit, whether
22 organized for profit or not.

23 ~~(27)~~(26) "Public health center" means a publicly owned
24 facility providing health services, including laboratories,
25 clinics, and administrative offices.

1 ~~(28)~~(27) "Rehabilitation facility" means a facility
2 which is operated for the primary purpose of assisting in
3 the rehabilitation of disabled persons by providing
4 comprehensive medical evaluations and services,
5 psychological and social services, or vocational evaluation
6 and training or any combination of these services and in
7 which the major portion of the services is furnished within
8 the facility.

9 ~~(29)~~(28) "Resident" means a person who is in a
10 long-term care facility for intermediate or personal care.

11 ~~(30)~~(29) "State health plan" means the plan prepared by
12 the department pursuant to 42-8-5-301-300m-2(a)(2) to project
13 the need for health care facilities within Montana and
14 approved by the statewide health coordinating council and
15 the governor."

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

17 "50-5-301. (Temporary) When certificate of need is
18 required -- definitions. (1) Unless a person has submitted
19 an application for and is the holder of a certificate of
20 need granted by the department, he may not initiate any of
21 the following:

22 (a) the incurring of an obligation by or on behalf of
23 a health care facility for any capital expenditure, other
24 than to acquire an existing health care facility or to
25 replace major medical equipment with equipment performing

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

11 (b) a change in the bed capacity of a health care
 12 facility by ~~10~~ through an increase in the number of beds or
 13 ~~10%, whichever is less, in any 2-year period through:~~

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

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

18 ~~(iii) a relocation of beds from one physical health~~
 19 ~~care facility or site to another, unless:~~

20 ~~(i) the number of beds involved is 10 or less or 10%~~
 21 ~~or less of the licensed beds (if fractional, rounded down to~~
 22 ~~the nearest whole number), whichever figure is smaller, in~~
 23 ~~any 2-year period;~~

24 ~~(ii) a letter of intent is submitted to the department;~~
 25 ~~and~~

1 (iii) the department determines the proposal will not
 2 significantly increase the cost of care provided or exceed
 3 the bed need projected in the state health plan;

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

10 (d) the acquisition by any person of major medical
 11 equipment, provided such acquisition would have required a
 12 certificate of need pursuant to subsection (1)(a) or (1)(c)
 13 of this section if it had been made by or on behalf of a
 14 health care facility;

15 (e) the incurring of an obligation for a capital
 16 expenditure by any person or persons to acquire 50% or more
 17 of an existing health care facility if unless:

18 (i) the person has failed to submit the notice submits
 19 the letter of intent required by 50-5-302(2); or and

20 (ii) the department finds within--30--days--after--it
 21 receives--the--notice-of-intent-required-by-50-5-302(3) that
 22 the acquisition will result in a change in the--services--or
 23 not significantly increase the cost of care provided or
 24 increase bed capacity of the facility;

25 (f) the construction, development, or other

1 establishment of a health care facility which is being
 2 replaced or which did not previously exist or which is being
 3 replaced; or, by any person, including another type of
 4 health care facility.

5 (g) the expansion of the geographical service area of
 6 a home health agency; or

7 (h) the use of hospital beds to provide services to
 8 patients or residents needing only skilled nursing care,
 9 intermediate nursing care, or intermediate developmental
 10 disability care, as those levels of care are defined in
 11 50-5-101.

12 (2) For purposes of subsection (1)(b), a change in bed
 13 capacity occurs on the date new or relocated beds are
 14 licensed pursuant to part 2 of this chapter and the date a
 15 final decision is made to grant a certificate of need for
 16 new or relocated beds, unless the certificate of need
 17 expires pursuant to 50-5-305.

18 (2)(3) For purposes of this section part, the
 19 following definitions apply:

20 (a) "Health care facility" or "facility" means a
 21 nonfederal ambulatory surgical facility, home health agency,
 22 hospital, long-term care facility, mental health center with
 23 inpatient services, inpatient chemical dependency facility,
 24 rehabilitation facility with inpatient services, or personal
 25 care facility.

1 (b) (i) "Long-term care facility" means an entity
 2 which provides skilled nursing care, intermediate nursing
 3 care, or intermediate developmental disability care, as
 4 defined in 50-5-101, to a total of two or more persons.

5 (ii) The term does not include adult foster care
 6 licensed under 53-5-303; community homes for the
 7 developmentally disabled licensed under 53-20-305; community
 8 homes for physically disabled persons licensed under
 9 53-19-111; boarding or foster homes for children licensed
 10 under 41-3-1142; hotels, motels, boardinghouses,
 11 roominghouses, or similar accommodations providing for
 12 transients, students, or persons not requiring institutional
 13 health care; or juvenile and adult correctional facilities
 14 operating under the authority of the department of
 15 institutions.

16 (c) "obligation Obligation for capital expenditure"
 17 does not include the authorization of bond sales or the
 18 offering or sale of bonds pursuant to the state long-range
 19 building program under Title 17, chapter 5, part 4, and
 20 Title 18, chapter 2, part 17.

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

25 (3)--A--proposed--change--in--a--project--associated--with--a

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

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

17 ~~(d) "Personal care facility" means an entity which~~
 18 ~~provides services and care which do not require nursing~~
 19 ~~skills to more than four persons who are not related to the~~
 20 ~~owner or administrator by blood or marriage and who need~~
 21 ~~some assistance in performing the activities of everyday~~
 22 ~~living. The term does not include those entities excluded~~
 23 ~~from the definition of "long-term care facility" in~~
 24 ~~subsection (b).~~

25 ~~(5)(a)(4) Expenditure thresholds for certificate of~~

1 need review are established as follows:

2 ~~(i)(a) For acquisition of equipment and the~~
 3 ~~construction of any building necessary to house the~~
 4 ~~equipment, the expenditure threshold is \$500,000 \$750,000.~~

5 ~~(ii)(b) For construction of health care facilities,~~
 6 ~~the expenditure threshold is \$750,000 \$1,500,000.~~

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

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

12 "50-5-302. (Temporary) Notice of intent -- application
 13 and review process. (1) The department may adopt rules
 14 including but not limited to rules for:

15 (a) the form and content of notices letters of intent
 16 and applications;

17 (b) the scheduling and consolidation of reviews of
 18 similar proposals;

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

20 (i) does not significantly affect the cost or use of
 21 health care;

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

1 (iii) is necessary to comply with licensure or
2 certification standards; or

3 ~~(iv) has been approved by the legislature pursuant to~~
4 ~~the long range building program under Title 17, chapter 5,~~
5 ~~part 47 and Title 18, chapter 2, part 1, providing the~~
6 ~~legislative findings accompanying such approval give~~
7 ~~consideration to the criteria of 50-5-304, and subject to~~
8 ~~the provisions of 50-5-309;~~

9 (iv) would add a health service that is subject to a
10 certificate of need review under 50-5-301(1)(c);

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

13 (e) the establishment of batching periods for
14 certificate of need applications for new beds and major
15 medical equipment, challenge periods, and the circumstances
16 under which applications from different batches may be
17 comparatively reviewed; establishment of new services; and
18 replacement of health care facilities; and

19 (f) the circumstances under which a certificate of
20 need may be approved for the use of hospital beds to provide
21 skilled nursing care, intermediate nursing care, or
22 intermediate developmental disability care to patients or
23 residents needing only that level of care.

24 (2) At least 30 days before any person or persons
25 acquires acquire or enters enter into a contract to acquire

1 50% or more of an existing health care facility, the person
2 they shall submit to the department and the appropriate
3 health systems agency a notice of his letter noting intent
4 to acquire the facility and of the services to be offered in
5 the facility and its bed capacity.

6 (3) Any person intending to initiate an activity for
7 which a certificate of need is required shall submit a
8 letter of intent to the department. ~~The letter of intent~~
9 ~~must be placed in the appropriate batch, if any. Any person~~
10 ~~who applies for comparative review by submitting a challenge~~
11 ~~letter of intent during the challenge period immediately~~
12 ~~following the batch must submit an application within 30~~
13 ~~days after the close of the challenge period.~~

14 (4) If the proposal is for new beds or major medical
15 equipment, the department shall place the letter of intent
16 in the appropriate batch unless, in the case of beds, the
17 proposal is determined to be exempt from review.

18 (5) Any person who desires comparative review with a
19 proposal in a batch must submit a challenge letter of intent
20 at least by the end of the challenge period following the
21 batching period for that batch.

22 (6) The department shall give to each person
23 submitting a letter of intent written notice of the
24 deadline for submission of an application for certificate of
25 need, which will be no less than 30 days after the notice is

1 sent.

2 ~~{4}~~(7) Within ~~15--calendar~~ 20 working days after
3 receipt of the an application, the department shall
4 determine whether it is complete~~;-if-after-the-15-days;~~ and
5 if the application is found incomplete, ~~the-department shall~~
6 send a written request to the applicant for the necessary
7 additional information ~~within-5-working-days~~. Upon receipt
8 of the additional information from the applicant, the
9 department shall have 15 working days to determine if the
10 application is complete and to send a notice to the
11 applicant that the application is complete or incomplete.
12 ~~if-the-department-fails-to-make-a-determination--as--to--the~~
13 ~~completeness-of-the-application-within-the-prescribed-15-day~~
14 ~~period;--the-application-shall-be-deemed-to-be-complete.--If~~
15 ~~the-applicant--fails--to--submit--the--necessary--additional~~
16 ~~information--requested--by-the-department-by-the-deadline-as~~
17 ~~prescribed-by-department-rules-for-considering-such-reviews;~~
18 ~~a-new-letter-of-intent-and-application-must-be-submitted-and~~
19 ~~the-application-will-be-dropped-from-the-current-batch. The~~
20 request for added information may be repeated as long as the
21 information submitted remains incomplete, and the department
22 shall have 15 working days after each submission to send a
23 notice that the application is complete or incomplete.

24 (8) If a proposal is to undergo comparative review
25 with another proposal but the applicant fails to submit the

1 necessary additional information requested by the department
2 by the deadline prescribed by department rules, the
3 application must be dropped from the current batch and
4 assigned to the next batching period.

5 (9) If the department fails to send the notices within
6 the periods prescribed in subsection (7), the application is
7 considered to be complete on the last day of the time period
8 during which the notice should have been sent.

9 ~~{5}~~(10) After an application is designated complete,
10 immediate notification must be sent to the applicant and all
11 other affected persons regarding the department's projected
12 time schedule for review of the application. The review
13 period for an application may be no longer than ~~60~~ 90
14 calendar days after the notice is sent ~~unless-a--hearing--is~~
15 ~~required;--in-which-case-the-review-must-be-completed-within~~
16 ~~120-days-after-the-notice--is--sent~~ or, if a challenging
17 application has been submitted as provided in subsection ~~{3}~~
18 (5), within ~~120~~ 90 days after the notice has been sent for
19 all such challenging applications. A longer period is
20 permitted with the consent of all affected applicants. ~~All~~
21 ~~completed--applications--pertaining--to--similar--types--of~~
22 ~~services,-facilities,-or-equipment-affecting-the-same-health~~
23 ~~service-area--may--be-considered-in-relation-to-each-other.~~
24 ~~During-the-review-period-a-public-hearing--may--be--held--if~~
25 ~~requested--by--an--affected--person--or--when--considered~~

~~appropriate by the department. Such a hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.~~

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area.

~~(6)(13)~~ The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or 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.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision."

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

"50-5-304. (Temporary) Review criteria, required findings, and standards. ~~(1)~~ The department shall by rule

promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

~~(a)(1) the relationship of the health services degree to which the proposal being reviewed to the applicable health systems plan, is consistent with the current state health plan, and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;~~

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

~~(c)(2) the need that the population served or to be served by the services proposal has for the services;~~

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

~~(e)(4) 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;~~

~~(f)(5) 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~~

1 provided; and
 2 (6) the consistency of the proposal with joint
 3 planning efforts by health care providers in the area;
 4 ~~(g)(7)~~ the availability of resources, including health
 5 manpower, management personnel, and funds for capital and
 6 operating needs, for the provision of services proposed to
 7 be provided and the availability of alternative uses of such
 8 resources for the provision of other health services;
 9 ~~(h)(8)~~ the relationship, including the organizational
 10 relationship, of the health services proposed to be provided
 11 to ancillary or support services;
 12 ~~(i) the special needs and circumstances of those~~
 13 ~~entities which provide a substantial portion of their~~
 14 ~~services or resources, or both, to individuals not residing~~
 15 ~~in the health service areas in which the entities are~~
 16 ~~located or in adjacent health service areas. Such entities~~
 17 ~~may include medical and other health profession schools,~~
 18 ~~multidisciplinary clinics, and specialty centers;~~
 19 ~~(j) the special needs and circumstances of health~~
 20 ~~maintenance organizations for which assistance may be~~
 21 ~~provided under Title XIII of the Public Health Service Act;~~
 22 ~~Such needs and circumstances include the needs of and costs~~
 23 ~~to members and projected members of the health maintenance~~
 24 ~~organization in obtaining health services and the potential~~
 25 ~~for a reduction in the use of inpatient care in the~~

1 ~~community through an extension of preventive health services~~
 2 ~~and the provision of more systematic and comprehensive~~
 3 ~~health services;~~
 4 ~~(k) the special needs and circumstances of biomedical~~
 5 ~~and behavioral research projects which are designed to meet~~
 6 ~~a national need and for which local conditions offer special~~
 7 ~~advantages;~~
 8 ~~(l)(9)~~ in the case of a construction project, the
 9 costs and methods of the proposed construction, including
 10 the costs and methods of energy provision, and the probable
 11 impact of the construction project reviewed on the costs of
 12 providing health services by the person proposing the
 13 construction project; and
 14 ~~(m)(10)~~ the distance, convenience, cost of
 15 transportation, and accessibility of health services for
 16 persons who live outside urban areas in relation to the
 17 proposal; and
 18 ~~(n) any other criteria, required findings, or~~
 19 ~~requirements for reviewing certificate of need applications~~
 20 ~~cited in the federal regulations found in Title 42, CFR,~~
 21 ~~Part 123, as amended;~~
 22 ~~(2) if an application for new long-term care beds will~~
 23 ~~involve new or increased use of Medicaid funds and the~~
 24 ~~department of social and rehabilitation services determines~~
 25 ~~that such use would cause the state Medicaid budget for~~

1 long-term-care-facilities-to-be-exceeded, the department of
 2 health-and-environmental-sciences-may-impose-conditions-on-a
 3 certificate-of-need-for-new-long-term-care-beds, including
 4 limitation-on-the-number-of-approved-beds-which-may-be
 5 certified-for-medicaid-patients, Availability-of-medicaid
 6 funding-may-be-the-basis-for-imposing-conditions-but-may-not
 7 be-the-sole-basis-for-denial-of-a-certificate-of-need. The
 8 department-may-adopt-rules-for-the-imposition-of-such
 9 conditions, but only if the secretary of the United States
 10 department-of-health-and-human-services-has-approved-an
 11 amendment-to-the-state's-medicaid-plan, adopted-pursuant-to
 12 42-U.S.C.--1396a7--allowing-for-the-imposition-of-such
 13 conditions."

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

15 "50-5-305. (Temporary) Period of validity of approved
 16 application. (1) Unless an extension is granted pursuant to
 17 subsection ~~(2)~~ (3), a certificate of need shall expire:

18 (a) 1 year after ~~its issuance~~ the decision to issue it
 19 is final if the applicant has not commenced construction on
 20 a project requiring construction or has not incurred an
 21 enforceable capital expenditure commitment for a project not
 22 requiring construction;

23 (b) 1 year from after the date the project is
 24 commenced plus the estimated period of time for completion
 25 as shown in the application if the approved project is not

1 complete; or

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

6 (2) For purposes of subsection (1)(a), if a
 7 reconsideration hearing is granted or an appeal filed under
 8 50-5-306, the final decision will be that following the
 9 hearing or resolving the appeal.

10 ~~(2)~~(3) The holder of an unexpired certificate of need
 11 may apply to the department to extend the term of the
 12 certificate of need for one additional period not to exceed
 13 6 months. The department may grant such an extension upon
 14 the applicant's demonstrating good cause as defined by
 15 department rule.

16 ~~(3)~~(4) The holder of an unexpired certificate of need
 17 shall report to the department in writing on the status of
 18 his project at the end of each ~~90-day~~ 6-month period after
 19 being granted a certificate of need until completion of the
 20 project for which the certificate of need was issued."

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

22 "50-5-306. (Temporary) Right to hearing and appeal.

23 (1) An affected person may request the department to hold a
 24 public hearing and to reconsider its decision. The
 25 department shall grant the request if the affected person

1 submits the request in writing showing good cause as defined
2 in rules adopted by the department and if the request is
3 received by the department within 20 30 calendar days after
4 the initial decision is announced.

5 (2) The public hearing to reconsider ~~shall~~ must be
6 held, ~~if warranted or required,~~ within 20 30 calendar days
7 after ~~its request~~ the request is received unless the
8 requestor agrees to waive the time limit.

9 (3) The reconsideration hearing must be conducted
10 pursuant to the provisions for informal proceedings of the
11 Montana Administrative Procedure Act.

12 (4) The department shall make its final decision and
13 serve the appellant with written findings of fact and
14 conclusions of law in support thereof of the decision within
15 30 days after the conclusion of the reconsideration hearing.

16 ~~(2)~~(5) Any affected person may appeal the department's
17 final decision to the district court as provided in Title 2,
18 chapter 4, part 7.

19 (6) If a petition to appeal the decision is filed, the
20 decision must be stayed pending resolution of the appeal by
21 the courts.

22 ~~(3)~~(7) The department may by rule prescribe in greater
23 detail the hearing and appellate procedures."

24 Section 7. Section 50-5-309, MCA, is amended to read:

25 "50-5-309. (Temporary) Exemptions from certificate of

1 need review. ~~(1)~~ Except as provided in subsection ~~(2)~~, the
2 following are exempt from certificate of need review:

3 ~~(a)~~ expenditures by a health care facility for
4 nonmedical and nonclinical facilities and services unrelated
5 to the operation of the health care facility if a letter of
6 intent is submitted pursuant to 50-5-302 at least 30 days
7 prior to incurring an obligation for capital expenditures to
8 enable the department to determine whether the expenditures
9 are exempt;

10 ~~(b)~~ a A project proposed by an agency of state
11 government that has been approved by the legislature
12 pursuant to the long-range building program under Title 17,
13 chapter 5, part 4, and Title 18, chapter 2, part 1, is
14 exempt from certificate of need review.

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

1 ~~adoption-of-the-rule."~~

2 NEW SECTION. Section 8. Fees. (1) There is no fee for
3 filing a letter of intent.

4 (2) An application for certificate of need approval
5 must be accompanied by a fee equaling 0.3% of the capital
6 expenditure projected in the application, except that the
7 fee may be no less than \$500.

8 (3) With the exception of the department and an
9 applicant whose proposal is approved and who does not
10 request the hearing, each affected person who is a party in
11 a reconsideration hearing held pursuant to 50-5-306(1)
12 shall pay the department \$500.

13 (4) Fees collected under this section must be
14 deposited in the state general fund.

15 Section 9. Section 13, Chapter 329, Laws of 1983, is
16 amended to read:

17 "Section 13. Effective dates. (1) This act is
18 effective on passage and approval, with delayed effective
19 dates.

20 (2) On July 1, ~~1987~~ 1989, 50-5-301, 50-5-302, and
21 50-5-304 through ~~50-5-308~~ 50-5-309, MCA, and ~~sections--8~~
22 ~~through--10~~ section 9 hereof are repealed unless reenacted by
23 the legislature.

24 (3) On July 1, ~~1987~~ 1989, 50-5-101, MCA, is amended by
25 deleting subsections (3), (5), (6), ~~(7)~~ (8) through (10),

1 ~~(13)~~, (14), (15), and ~~(27)~~ (28) unless reenacted by the
2 legislature.

3 (4) On July 1, ~~1987~~ 1989, 50-5-106, MCA, is amended to
4 read as follows, unless reenacted by the legislature:

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

24 NEW SECTION. Section 10. Codification instruction.
25 Section 8 is intended to be codified as an integral part of

1 Title 50, chapter 5, part 3, and the provisions of Title 50,
2 chapter 5, part 3, apply to section 8.

3 NEW SECTION. Section 11. Extension of authority. Any
4 existing authority of the department of health and
5 environmental sciences to make rules on the subject of the
6 provisions of this act is extended to the provisions of this
7 act.

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

12 NEW SECTION. Section 13. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 14. Effective date. This act is
19 effective June 30, 1987.

-End-

1 STATEMENT OF INTENT .

2 SENATE BILL 246

3 House Health and Human Services Committee
4

5 A statement of intent is prepared for this bill because
6 the committee felt it was necessary to ensure compliance
7 with legislative intent in furtherance of the extension of
8 rulemaking authority provided in section 11.

9 The legislature contemplates that the department of
10 health and environmental sciences will continue to monitor
11 the effects of certificate of need and other factors that
12 control capital expenditures and development of health care
13 service capacity. By December 1, 1988, the department must
14 provide for the 1989 legislature an evaluation of the need
15 to continue the certificate of need program beyond June 30,
16 1989, and identify any alternative legislation that would be
17 needed if certificate of need were to be discontinued. It is
18 also this committee's intent that the legislative audit
19 committee review and, if possible, make a performance audit
20 of the certificate of need process and make its
21 recommendation to the 1989 legislature.

SENATE BILL NO. 246

INTRODUCED BY BENGTSON, HIMSL, WINSLOW, BARDANOUE,
 KEATING, REGAN, J. BROWN, HANSON, DEVLIN, ADDY,
 M. WILLIAMS, ECK, WEEDING, HAGER, DARKO, E. SMITH,
 SWITZER, BRADLEY, MENAHAN, LYNCH, VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 CLARIFY CERTIFICATE OF NEED REQUIREMENTS FOR HEALTH CARE
 FACILITIES; EXTENDING THE TIME THE CERTIFICATE OF NEED LAWS
 ARE IN EFFECT; AMENDING SECTIONS 50-5-101, 50-5-301,
 50-5-302, 50-5-304 THROUGH 50-5-306, 50-5-309, MCA, AND
 SECTION 13, CHAPTER 329, LAWS OF 1983; AND PROVIDING AN
 EFFECTIVE DATE."

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. (Temporary) 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,
 freestanding 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 person" means the an applicant
for certificate of need, members a member of the public who
are--to will be served by the proposal, a health care
facilities facility located in the geographic area affected
 by the application, agencies an agency which establish
establishes rates for health care facilities, a third-party
payers payer who reimburse reimburses health care facilities
 in the area affected by the proposal, and-agencies or an
agency which plan-or-assist plans or assists in planning for
 such facilities, ~~including any agency qualifying as a health~~
~~systems agency pursuant to Title XV of the Public Health~~
~~Service Act.~~

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

(5) "Batch" means those letters of intent and
~~applications--of-a-specified-category-and-within-a-specified~~
~~region-of-the-state, as established by department--rule, to~~
seek approval for new beds or major medical equipment 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

1 of intent for--specified--categories--of--new--institutional
2 health--services--and-for-specified-regions-of-the-state-may
3 be to seek approval for new beds or major medical equipment
4 are accumulated pending further processing of all letters of
5 intent within the batch.

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

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

13 (b) a lease, donation, or comparable arrangement that
14 would be a capital expenditure if money or any other
15 property of value had changed hands.

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

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

24 (11) "Chemical dependency facility" means a facility
25 whose function is the treatment, rehabilitation, and

1 prevention of the use of any chemical substance, including
2 alcohol, which creates behavioral or health problems and
3 endangers the health, interpersonal relationships, or
4 economic function of an individual or the public health,
5 welfare, or safety.

6 {11}{12} "Clinical laboratory" means a facility for the
7 microbiological, serological, chemical, hematological,
8 radiobioassay, cytological, immunohematological,
9 pathological, or other examination of materials derived from
10 the human body for the purpose of providing information for
11 the diagnosis, prevention, or treatment of any disease or
12 assessment of a medical condition.

13 {12}{13} "College of American pathologists" means the
14 organization nationally recognized by that name with
15 headquarters in Traverse City, Michigan, that surveys
16 clinical laboratories upon their requests and accredits
17 clinical laboratories that it finds meet its standards and
18 requirements.

19 {13}{14} "Comparative review" means a joint review of
20 two or more certificate of need applications within a given
21 batch which are determined by the department to be
22 competitive in that the granting of a certificate of need to
23 one of the applicants would substantially prejudice the
24 department's review of the other applications.

25 {14}{15} "Construction" means the physical erection of

1 a health care facility and any stage thereof, including
2 ground breaking, or remodeling, replacement, or renovation
3 of an existing health care facility.

4 ~~(15)~~(16) "Department" means the department of health
5 and environmental sciences provided for in Title 2, chapter
6 15, part 21.

7 ~~(16)~~(17) "Federal acts" means federal statutes for the
8 construction of health care facilities.

9 ~~(17)~~(18) "Governmental unit" means the state, a state
10 agency, a county, municipality, or political subdivision of
11 the state, or an agency of a political subdivision.

12 ~~(18)~~(19) "Health care facility" or "facility" means any
13 institution, building, or agency or portion thereof, private
14 or public, excluding federal facilities, whether organized
15 for profit or not, used, operated, or designed to provide
16 health services, medical treatment, or nursing,
17 rehabilitative, or preventive care to any person or persons.
18 The term does not include offices of private physicians or
19 dentists. The term includes but is not limited to ambulatory
20 surgical facilities, health maintenance organizations, home
21 health agencies, hospices, hospitals, infirmaries, kidney
22 treatment centers, long-term care facilities, mental health
23 centers, outpatient facilities, public health centers,
24 rehabilitation facilities, and adult day-care centers.

25 ~~(19)~~(20) "Health maintenance organization" means a

1 public or private organization ~~organized-as-defined-in-42~~
2 ~~U.S.C.-300e7-as-amended~~ which provides or arranges for
3 health care services to enrollees on a prepaid or other
4 financial basis, either directly through provider employees
5 or through contractual or other arrangements with a provider
6 or group of providers.

7 ~~(20)~~"Health--systems--agency" means an entity which is
8 organized and operated in the manner described in 42--U.S.C.
9 300i-2--and which is capable, as determined by the secretary
10 of--the--United--States--department--of--health--and--human
11 services,--of--performing--each--of--the--functions--described--in
12 42-U.S.C.-300i-2.

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

20 (22) "Hospice" means a coordinated program of home and
21 inpatient health care that provides or coordinates
22 palliative and supportive care to meet the needs of a
23 terminally ill patient and his family arising out of
24 physical, psychological, spiritual, social, and economic
25 stresses experienced during the final stages of illness and

1 dying and that includes formal bereavement programs as an
2 essential component.

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

15 (24) "Infirmery" means a facility located in a
16 university, college, government institution, or industry for
17 the treatment of the sick or injured, with the following
18 subdefinitions:

19 (a) an "infirmery--A" provides outpatient and
20 inpatient care;

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

22 (25) "Joint commission on accreditation of hospitals"
23 means the organization nationally recognized by that name
24 with headquarters in Chicago, Illinois, that surveys health
25 care facilities upon their requests and grants accreditation

1 status to any health care facility that it finds meets its
2 standards and requirements.

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

6 (27) (a) "Long-term care facility" means a facility or
7 part thereof which provides skilled nursing care,
8 intermediate nursing care, or intermediate developmental
9 disability care to a total of two or more persons or
10 personal care to more than four persons who are not related
11 to the owner or administrator by blood or marriage. The
12 term does not include adult foster care licensed under
13 53-5-303, community homes for the developmentally disabled
14 licensed under 53-20-305, community homes for physically
15 disabled persons licensed under 53-19-111, boarding or
16 foster homes for children licensed under 41-3-1142, hotels,
17 motels, boardinghouses, roominghouses, or similar
18 accommodations providing for transients, students, or
19 persons not requiring institutional health care, or juvenile
20 and adult correctional facilities operating under the
21 authority of the department of institutions.

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

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

5 (d) "Intermediate developmental disability care" means
 6 the provision of nursing care services, health-related
 7 services, and social services for the developmentally
 8 disabled, as defined in 53-20-102(4), or persons with
 9 related problems.

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

14 (28) "Major medical equipment" means a single unit of
 15 medical equipment or a single system of components with
 16 related functions which is used to provide medical or other
 17 health services and costs a substantial sum of money.

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

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

1 (31) "Observation bed" means a bed occupied for not
 2 more than 6 hours by a patient recovering from surgery or
 3 other treatment.

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

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

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

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

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

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

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

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

6 (39) "State health plan" means the plan prepared by the
7 department pursuant to 42-U.S.C.-380m-2(a)+2) to project the
8 need for health care facilities within Montana and approved
9 by the statewide health coordinating council and the
10 governor.

11 50-5-101. (Effective July 1, 1989) Definitions. As
12 used in parts 1 through 4 of this chapter, unless the
13 context clearly indicates otherwise, the following
14 definitions apply:

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

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

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

25 (4) "Board" means the board of health and

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

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

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

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

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

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

23 (10) "Health care facility" or "facility" means any
24 institution, building, or agency or portion thereof, private
25 or public, excluding federal facilities, whether organized

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

11 (11) "Health maintenance organization" means a public
 12 or private organization ~~organized as defined in 42 U.S.C.~~
 13 ~~300e, as amended~~ that provides or arranges for health care
 14 services to enrollees on a prepaid or other financial basis,
 15 either directly through provider employees or through
 16 contractual or other arrangements with a provider or group
 17 of providers.

18 ~~{12} "Health systems agency" means an entity which is~~
 19 ~~organized and operated in the manner described in 42 U.S.C.~~
 20 ~~300i-2 and which is capable, as determined by the secretary~~
 21 ~~of the United States department of health and human~~
 22 ~~services, of performing each of the functions described in~~
 23 ~~42 U.S.C. 300i-2.~~

24 {13}(12) "Home health agency" means a public agency or
 25 private organization or subdivision thereof which is engaged

1 in providing home health services to individuals in the
 2 places where they live. Home health services must include
 3 the services of a licensed registered nurse and at least one
 4 other therapeutic service and may include additional support
 5 services.

6 {14}(13) "Hospice" means a coordinated program of home
 7 and inpatient health care that provides or coordinates
 8 palliative and supportive care to meet the needs of a
 9 terminally ill patient and his family arising out of
 10 physical, psychological, spiritual, social, and economic
 11 stresses experienced during the final stages of illness and
 12 dying and that includes formal bereavement programs as an
 13 essential component.

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

1 †16†(15) "Infirmary" means a facility located in a
2 university, college, government institution, or industry for
3 the treatment of the sick or injured, with the following
4 subdefinitions:

5 (a) an "infirmary--A" provides outpatient and
6 inpatient care;

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

8 †17†(16) "Joint commission on accreditation of
9 hospitals" means the organization nationally recognized by
10 that name with headquarters in Chicago, Illinois, that
11 surveys health care facilities upon their requests and
12 grants accreditation status to any health care facility that
13 it finds meets its standards and requirements.

14 †18†(17) "Kidney treatment center" means a facility
15 which specializes in treatment of kidney diseases, including
16 freestanding hemodialysis units.

17 †19†(18) (a) "Long-term care facility" means a facility
18 or part thereof which provides skilled nursing care,
19 intermediate nursing care, or intermediate developmental
20 disability care to a total of two or more persons or
21 personal care to more than four persons who are not related
22 to the owner or administrator by blood or marriage. The
23 term does not include adult foster care licensed under
24 53-5-303, community homes for the developmentally disabled
25 licensed under 53-20-305, community homes for physically

1 disabled persons licensed under 53-19-111, boarding or
2 foster homes for children licensed under 41-3-1142, hotels,
3 motels, boardinghouses, roominghouses, or similar
4 accommodations providing for transients, students, or
5 persons not requiring institutional health care, or juvenile
6 and adult correctional facilities operating under the
7 authority of the department of institutions.

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

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

16 (d) "Intermediate developmental disability care" means
17 the provision of nursing care services, health-related
18 services, and social services for the developmentally
19 disabled, as defined in 53-20-102(4), or persons with
20 related problems.

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

25 †20†(19) "Mental health center" means a facility

1 providing services for the prevention or diagnosis of mental
2 illness, the care and treatment of mentally ill patients or
3 the rehabilitation of such persons, or any combination of
4 these services.

5 ~~(21)~~(20) "Nonprofit health care facility" means a
6 health care facility owned or operated by one or more
7 nonprofit corporations or associations.

8 ~~(22)~~(21) "Observation bed" means a bed occupied for not
9 more than 6 hours by a patient recovering from surgery or
10 other treatment.

11 ~~(23)~~(22) "Offer" means the holding out by a health care
12 facility that it can provide specific health services.

13 ~~(24)~~(23) "Outpatient facility" means a facility,
14 located in or apart from a hospital, providing, under the
15 direction of a licensed physician, either diagnosis or
16 treatment, or both, to ambulatory patients in need of
17 medical, surgical, or mental care. An outpatient facility
18 may have observation beds.

19 ~~(25)~~(24) "Patient" means an individual obtaining
20 services, including skilled nursing care, from a health care
21 facility.

22 ~~(26)~~(25) "Person" means any individual, firm,
23 partnership, association, organization, agency, institution,
24 corporation, trust, estate, or governmental unit, whether
25 organized for profit or not.

1 ~~(27)~~(26) "Public health center" means a publicly owned
2 facility providing health services, including laboratories,
3 clinics, and administrative offices.

4 ~~(28)~~(27) "Rehabilitation facility" means a facility
5 which is operated for the primary purpose of assisting in
6 the rehabilitation of disabled persons by providing
7 comprehensive medical evaluations and services,
8 psychological and social services, or vocational evaluation
9 and training or any combination of these services and in
10 which the major portion of the services is furnished within
11 the facility.

12 ~~(29)~~(28) "Resident" means a person who is in a
13 long-term care facility for intermediate or personal care.

14 ~~(30)~~(29) "State health plan" means the plan prepared by
15 the department pursuant to ~~42-8-57-300m-2(a)(2)~~ to project
16 the need for health care facilities within Montana and
17 approved by the statewide health coordinating council and
18 the governor."

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

20 "50-5-301. (Temporary) When certificate of need is
21 required -- definitions. (1) Unless a person has submitted
22 an application for and is the holder of a certificate of
23 need granted by the department, he may not initiate any of
24 the following:

25 (a) the incurring of an obligation by or on behalf of

1 a health care facility for any capital expenditure, other
 2 than to acquire an existing health care facility or to
 3 replace major medical equipment with equipment performing
 4 substantially the same function and in the same manner, that
 5 exceeds the expenditure thresholds established in or
 6 pursuant--to subsection (5)(4). The costs of any studies,
 7 surveys, designs, plans, working drawings, specifications,
 8 and other activities (including staff effort, and
 9 consulting, and other services) essential to the
 10 acquisition, improvement, expansion, or replacement of any
 11 plant or equipment with respect to which an expenditure is
 12 made must be included in determining if the expenditure
 13 exceeds the expenditure thresholds.

14 (b) a change in the bed capacity of a health care
 15 facility by 10 through an increase in the number of beds or
 16 10%, whichever is less, in any 2-year period through:

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

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

21 ~~(iii) a relocation of beds from one physical health~~
 22 care facility or site to another, unless:

23 (i) the number of beds involved is 10 or less or 10%
 24 or less of the licensed beds (if fractional, rounded down to
 25 the nearest whole number), whichever figure is smaller, in

1 any 2-year period;

2 (ii) a letter of intent is submitted to the department;
 3 and

4 (iii) the department determines the proposal will not
 5 significantly increase the cost of care provided or exceed
 6 the bed need projected in the state health plan;

7 (c) the addition of a health service that is offered
 8 by or on behalf of a health care facility which was not
 9 offered by or on behalf of the facility within the 12-month
 10 period before the month in which the service would be
 11 offered and which will result in additional annual operating
 12 and amortization expenses of ~~\$100,000~~ \$150,000 or more;

13 (d) the acquisition by any person of major medical
 14 equipment, provided such acquisition would have required a
 15 certificate of need pursuant to subsection (1)(a) or (1)(c)
 16 of this section if it had been made by or on behalf of a
 17 health care facility;

18 (e) the incurring of an obligation for a capital
 19 expenditure by any person or persons to acquire 50% or more
 20 of an existing health care facility if unless:

21 (i) ~~the person has failed to submit the notice~~ submits
 22 the letter of intent required by 50-5-302(2); or and

23 (ii) the department finds ~~within 30 days after it~~
 24 ~~receives the notice of intent required by 50-5-302(3)~~ that
 25 ~~the acquisition will result in a change in the services or~~

1 not significantly increase the cost of care provided or
 2 increase bed capacity of-the-facility;

3 (f) the construction, development, or other
 4 establishment of a health care facility which is being
 5 replaced or which did not previously exist or-which-is-being
 6 replaced; or, by any person, including another type of
 7 health care facility.

8 (g) the expansion of the geographical service area of
 9 a home health agency; or

10 (h) the use of hospital beds to provide services to
 11 patients or residents needing only skilled nursing care,
 12 intermediate nursing care, or intermediate developmental
 13 disability care, as those levels of care are defined in
 14 50-5-101.

15 (2) For purposes of subsection (1)(b), a change in bed
 16 capacity occurs on the date new or relocated beds are
 17 licensed pursuant to part 2 of this chapter and the date a
 18 final decision is made to grant a certificate of need for
 19 new or relocated beds, unless the certificate of need
 20 expires pursuant to 50-5-305.

21 ~~(2)~~(3) For purposes of this section part, the
 22 following definitions apply:

23 (a) "Health care facility" or "facility" means a
 24 nonfederal ambulatory surgical facility, home health agency,
 25 hospital, long-term care facility, mental health center with

1 inpatient services, inpatient chemical dependency facility,
 2 rehabilitation facility with inpatient services, or personal
 3 care facility.

4 (b) (i) "Long-term care facility" means an entity
 5 which provides skilled nursing care, intermediate nursing
 6 care, or intermediate developmental disability care, as
 7 defined in 50-5-101, to a total of two or more persons.

8 (ii) The term does not include adult foster care
 9 licensed under 53-5-303; community homes for the
 10 developmentally disabled licensed under 53-20-305; community
 11 homes for physically disabled persons licensed under
 12 53-19-111; boarding or foster homes for children licensed
 13 under 41-3-1142; hotels, motels, boardinghouses,
 14 roominghouses, or similar accommodations providing for
 15 transients, students, or persons not requiring institutional
 16 health care; or juvenile and adult correctional facilities
 17 operating under the authority of the department of
 18 institutions.

19 ~~(a)~~(c) "obligation Obligation for capital expenditure"
 20 does not include the authorization of bond sales or the
 21 offering or sale of bonds pursuant to the state long-range
 22 building program under Title 17, chapter 5, part 4, and
 23 Title 18, chapter 2, part 17.

24 ~~(b)~~--a--health--maintenance--organization--is--to--be
 25 considered-a-health--care--facility--except--to--the--extent

1 exempted from certificate of need requirements as prescribed
2 in rules adopted by the department.

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

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

20 (d) "Personal care facility" means an entity which
21 provides services and care which do not require nursing
22 skills to more than four persons who are not related to the
23 owner or administrator by blood or marriage and who need
24 some assistance in performing the activities of everyday
25 living. The term does not include those entities excluded

1 from the definition of "long-term care facility" in
2 subsection (b).

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

5 (i)(a) For acquisition of equipment and the
6 construction of any building necessary to house the
7 equipment, the expenditure threshold is ~~\$500,000~~ \$750,000.

8 (ii)(b) For construction of health care facilities,
9 the expenditure threshold is ~~\$750,000~~ \$1,500,000.

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

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

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

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

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

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

25 (ii) is necessary to eliminate or prevent imminent

1 safety hazards or to repair or replace a facility damaged or
2 destroyed as a result of fire, storm, civil disturbance, or
3 any act of God;

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

6 ~~(iv) has been approved by the legislature pursuant to~~
7 ~~the long range building program under Title 17, chapter 57,~~
8 ~~part 47 and Title 18, chapter 27, part 17, providing the~~
9 ~~legislative findings accompanying such approval give~~
10 ~~consideration to the criteria of 50-5-3047 and subject to~~
11 ~~the provisions of 50-5-3097;~~

12 (iv) would add a health service that is subject to a
13 certificate of need review under 50-5-301(1)(c);

14 (d) the format of public informational hearings and
15 reconsideration hearings; and

16 (e) the establishment of batching periods for
17 certificate of need applications for new beds and major
18 medical equipment, challenge periods, and the circumstances
19 under which applications from different batches may be
20 comparatively reviewed;~~establishment of new services; and~~
21 ~~replacement of health care facilities; and~~

22 (f) the circumstances under which a certificate of
23 need may be approved for the use of hospital beds to provide
24 skilled nursing care, intermediate nursing care, or
25 intermediate developmental disability care to patients or

1 residents needing only that level of care.

2 (2) At least 30 days before any person or persons
3 acquires acquire or enters enter into a contract to acquire
4 50% or more of an existing health care facility, the person
5 they shall submit to the department ~~and the appropriate~~
6 ~~health systems agency~~ a notice of his letter noting intent
7 to acquire the facility and of the services to be offered in
8 the facility and its bed capacity.

9 (3) Any person intending to initiate an activity for
10 which a certificate of need is required shall submit a
11 letter of intent to the department. ~~The letter of intent~~
12 ~~must be placed in the appropriate batch, if any. Any person~~
13 ~~who applies for comparative review by submitting a challenge~~
14 ~~letter of intent during the challenge period immediately~~
15 ~~following the batch must submit an application within 30~~
16 ~~days after the close of the challenge period.~~

17 (4) If the proposal is for new beds or major medical
18 equipment, the department shall place the letter of intent
19 in the appropriate batch unless, in the case of beds, the
20 proposal is determined to be exempt from review.

21 (5) Any person who desires comparative review with a
22 proposal in a batch must submit a challenge letter of intent
23 at least by the end of the challenge period following the
24 batching period for that batch.

25 (6) The department shall give to each person

1 submitting a letter of intent written notice of the
 2 deadline for submission of an application for certificate of
 3 need, which will be no less than 30 days after the notice is
 4 sent.

5 ~~{4}{7}~~ Within ~~15--calendar~~ 20 working days after
 6 receipt of the an application, the department shall
 7 determine whether it is complete; ~~if, after the 15 days,~~ and
 8 if the application is found incomplete, the department shall
 9 send a written request to the applicant for the necessary
 10 additional information within 5 working days. Upon receipt
 11 of the additional information from the applicant, the
 12 department shall have 15 working days to determine if the
 13 application is complete and to send a notice to the
 14 applicant that the application is complete or incomplete.
 15 ~~if the department fails to make a determination--as--to--the~~
 16 ~~completeness--of--the--application--within--the--prescribed--15--day~~
 17 ~~period;--the--application--shall--be--deemed--to--be--complete;--if~~
 18 ~~the--applicant--fails--to--submit--the--necessary--additional~~
 19 ~~information--requested--by--the--department--by--the--deadline--as~~
 20 ~~prescribed--by--department--rules--for--considering--such--reviews,~~
 21 ~~a--new--letter--of--intent--and--application--must--be--submitted--and~~
 22 ~~the--application--will--be--dropped--from--the--current--batch; The~~
 23 request for added information may be repeated as long as the
 24 information submitted remains incomplete, and the department
 25 shall have 15 working days after each submission to send a

1 notice that the application is complete or incomplete.

2 (8) If a proposal is to undergo comparative review
 3 with another proposal but the applicant fails to submit the
 4 necessary additional information requested by the department
 5 by the deadline prescribed by department rules, the
 6 application must be dropped from the current batch and
 7 assigned to the next batching period.

8 (9) If the department fails to send the notices within
 9 the periods prescribed in subsection (7), the application is
 10 considered to be complete on the last day of the time period
 11 during which the notice should have been sent.

12 ~~{5}{10}~~ After an application is designated complete,
 13 immediate notification must be sent to the applicant and all
 14 other affected persons regarding the department's projected
 15 time schedule for review of the application. The review
 16 period for an application may be no longer than 60 90
 17 calendar days after the notice is sent unless a hearing is
 18 required, in which case the review must be completed within
 19 120 days after the notice is sent or, if a challenging
 20 application has been submitted as provided in subsection {3}
 21 (5), within 120 90 days after the notice has been sent for
 22 all such challenging applications. A longer period is
 23 permitted with the consent of all affected applicants. All
 24 completed applications pertaining to similar types of
 25 services, facilities, or equipment affecting the same health

1 ~~service--area--may--be--considered--in--relation--to--each--other--~~
 2 ~~During--the--review--period--a--public--hearing--may--be--held--if~~
 3 ~~requested--by--an--affected--person--or--when--considered~~
 4 ~~appropriate--by--the--department--Such--a--hearing--must--be~~
 5 ~~conducted--pursuant--to--the--provisions--for--informal~~
 6 ~~proceedings--of--the--Montana--Administrative--Procedure--Act--~~

7 (11) During the review period a public hearing may be
 8 held if requested by an affected person or when considered
 9 appropriate by the department.

10 (12) Each completed application may be considered in
 11 relation to other applications pertaining to similar types
 12 of facilities or equipment affecting the same health service
 13 area.

14 ~~(6)(13)~~ The department shall, after considering all
 15 comments received during the review period, issue a
 16 certificate of need, with or without conditions, or deny the
 17 application. The department shall notify the applicant and
 18 affected persons of its decision within 5 working days after
 19 expiration of the review period.

20 (14) If the department fails to reach a decision and
 21 notify the applicant of its decision within the deadlines
 22 established in this section and if that delay constitutes an
 23 abuse of the department's discretion, the applicant may
 24 apply to district court for a writ of mandamus to force the
 25 department to render a decision."

1 Section 4. Section 50-5-304, MCA, is amended to read:
 2 "50-5-304. (Temporary) Review criteria, required
 3 findings, and standards. (1) The department shall by rule
 4 promulgate and utilize, as appropriate, specific criteria
 5 for reviewing certificate of need applications under this
 6 chapter, including but not limited to the following
 7 considerations and required findings:

8 ~~(a)(1)~~ the relationship of the health services degree
 9 to which the proposal being reviewed ~~to--the--applicable~~
 10 ~~health--systems--plan,~~ is consistent with the current state
 11 health plan, ~~and--annual--implementation--plan--developed~~
 12 ~~pursuant--to--Title--XV--of--the--Public--Health--Service--Act,~~ as
 13 amended;

14 ~~(b)~~ ~~the--relationship--of--services--reviewed--to--the~~
 15 ~~long--range--development--plan,~~ if any, ~~of the person providing~~
 16 ~~or--proposing--the--services;~~

17 ~~(c)(2)~~ the need that the population served or to be
 18 served by the services proposal has for the services;

19 ~~(d)(3)~~ the availability of less costly
 20 quality-equivalent or more effective alternative methods of
 21 providing such services;

22 ~~(e)(4)~~ the immediate and long-term financial
 23 feasibility of the proposal as well as the probable impact
 24 of the proposal on the costs of and charges for providing
 25 health services by the person proposing the health service;

1 {f}{5} the relationship and financial impact of the
2 services proposed to be provided to the existing health care
3 system of the area in which such services are proposed to be
4 provided; and

5 {6} the consistency of the proposal with joint
6 planning efforts by health care providers in the area;

7 {g}{7} the availability of resources, including health
8 manpower, management personnel, and funds for capital and
9 operating needs, for the provision of services proposed to
10 be provided and the availability of alternative uses of such
11 resources for the provision of other health services;

12 {h}{8} the relationship, including the organizational
13 relationship, of the health services proposed to be provided
14 to ancillary or support services;

15 {i}--the--special--needs--and--circumstances--of--those
16 entities--which--provide--a--substantial--portion--of--their
17 services--or--resources,--or--both,--to--individuals--not--residing
18 in--the--health--service--areas--in--which--the--entities--are
19 located--or--in--adjacent--health--service--areas. Such entities
20 may include medical and other health profession schools,
21 multidisciplinary clinics, and specialty centers.

22 {j}--the--special--needs--and--circumstances--of--health
23 maintenance--organizations--for--which--assistance--may--be
24 provided--under--Title--XIII--of--the--Public--Health--Service--Act.
25 Such needs and circumstances include the needs of and costs

1 to--members--and--projected--members--of--the--health--maintenance
2 organization--in--obtaining--health--services--and--the--potential
3 for--a--reduction--in--the--use--of--inpatient--care--in--the
4 community--through--an--extension--of--preventive--health--services
5 and--the--provision--of--more--systematic--and--comprehensive
6 health--services.

7 {k}--the--special--needs--and--circumstances--of--biomedical
8 and--behavioral--research--projects--which--are--designed--to--meet
9 a--national--need--and--for--which--local--conditions--offer--special
10 advantages;

11 {l}{9} in the case of a construction project, the
12 costs and methods of the proposed construction, including
13 the costs and methods of energy provision, and the probable
14 impact of the construction project reviewed on the costs of
15 providing health services by the person proposing the
16 construction project; and

17 {m}{10} the distance, convenience, cost of
18 transportation, and accessibility of health services for
19 persons who live outside urban areas in relation to the
20 proposal; and

21 {n}--any--other--criteria,--required--findings,--or
22 requirements--for--reviewing--certificate--of--need--applications
23 cited--in--the--federal--regulations--found--in--Title--42,--CFR,
24 Part--123,--as--amended.

25 {o}--if--an--application--for--new--long--term--care--beds--will

1 involve new or increased use of medicaid funds and the
 2 department of social and rehabilitation services determines
 3 that such use would cause the state medicaid budget for
 4 long-term care facilities to be exceeded, the department of
 5 health and environmental sciences may impose conditions on a
 6 certificate of need for new long-term care beds, including
 7 limitation on the number of approved beds which may be
 8 certified for medicaid patients. Availability of medicaid
 9 funding may be the basis for imposing conditions but may not
 10 be the sole basis for denial of a certificate of need. The
 11 department may adopt rules for the imposition of such
 12 conditions, but only if the secretary of the United States
 13 department of health and human services has approved an
 14 amendment to the state's medicaid plan, adopted pursuant to
 15 42 U.S.C. 1396a, allowing for the imposition of such
 16 conditions."

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

18 "50-5-305. (Temporary) Period of validity of approved
 19 application. (1) Unless an extension is granted pursuant to
 20 subsection (2) (3), a certificate of need shall expire:

21 (a) 1 year after its issuance the decision to issue it
 22 is final if the applicant has not commenced construction on
 23 a project requiring construction or has not incurred an
 24 enforceable capital expenditure commitment for a project not
 25 requiring construction;

1 (b) 1 year from after the date the project is
 2 commenced plus the estimated period of time for completion
 3 as shown in the application if the approved project is not
 4 complete; or

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

9 (2) For purposes of subsection (1)(a), if a
 10 reconsideration hearing is granted or an appeal filed under
 11 50-5-306, the final decision will be that following the
 12 hearing or resolving the appeal.

13 (3) The holder of an unexpired certificate of need
 14 may apply to the department to extend the term of the
 15 certificate of need for one additional period not to exceed
 16 6 months. The department may grant such an extension upon
 17 the applicant's demonstrating good cause as defined by
 18 department rule.

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

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

25 "50-5-306. (Temporary) Right to hearing and appeal.

1 (1) An affected person may request the department to hold a
2 public hearing and to reconsider its decision. The
3 department shall grant the request if the affected person
4 submits the request in writing ~~showing good cause as defined~~
5 ~~in rules adopted by the department~~ and if the request is
6 received by the department within ~~20~~ 30 calendar days after
7 the initial decision is announced.

8 (2) The public hearing to reconsider ~~shall~~ must be
9 held, ~~if warranted or required,~~ within ~~20~~ 30 calendar days
10 after ~~its request~~ the request is received unless the
11 requestor agrees to waive the time limit.

12 (3) The reconsideration hearing must be conducted
13 pursuant to the provisions for informal proceedings of the
14 Montana Administrative Procedure Act.

15 (4) The department shall make its final decision and
16 serve the appellant with written findings of fact and
17 conclusions of law in support ~~thereof~~ of the decision within
18 30 days after the conclusion of the reconsideration hearing.

19 (2)(5) Any affected person may appeal the department's
20 final decision to the district court as provided in Title 2,
21 chapter 4, part 7.

22 (6) If a petition to appeal the decision is filed, the
23 decision must be stayed pending resolution of the appeal by
24 the courts.

25 (3)(7) The department may by rule prescribe in greater

1 detail the hearing and appellate procedures."

2 Section 7. Section 50-5-309, MCA, is amended to read:
3 "50-5-309. (Temporary) Exemptions from certificate of
4 need review. ~~{1} Except as provided in subsection {2}, the~~
5 ~~following are exempt from certificate of need review:~~

6 ~~{a} expenditures by a health care facility for~~
7 ~~nonmedical and nonclinical facilities and services unrelated~~
8 ~~to the operation of the health care facility if a letter of~~
9 ~~intent is submitted pursuant to 50-5-302 at least 30 days~~
10 ~~prior to incurring an obligation for capital expenditures to~~
11 ~~enable the department to determine whether the expenditures~~
12 ~~are exempt;~~

13 ~~{b} a~~ A project proposed by an agency of state
14 government that has been approved by the legislature
15 pursuant to the long-range building program under Title 17,
16 chapter 5, part 4, and Title 18, chapter 2, part 1, is
17 exempt from certificate of need review.

18 ~~{2} If the secretary of the United States department~~
19 ~~of health and human services notifies the state that the~~
20 ~~sanctions provided by section 1521 of the Public Health~~
21 ~~Service Act and all acts amendatory thereto or any other~~
22 ~~federal statute for noncompliance with federal certificate~~
23 ~~of need requirements are to be imposed, the department may~~
24 ~~by rule require certificate of need review for projects~~
25 ~~exempted by subsection {1} that are otherwise subject to the~~

1 ~~provisions--of-this-part--Any-rule-adopted-by-the-department~~
 2 ~~under-this-subsection-is-effective-only-until-the--10th--day~~
 3 ~~of--the--next--regular--legislative--session--following--the~~
 4 ~~adoption-of-the-rule."~~

5 NEW SECTION. Section 8. Fees. (1) There is no fee for
 6 filing a letter of intent.

7 (2) An application for certificate of need approval
 8 must be accompanied by a fee equaling 0.3% of the capital
 9 expenditure projected in the application, except that the
 10 fee may be no less than \$500.

11 (3) With the exception of the department and an
 12 applicant whose proposal is approved and who does not
 13 request the hearing, each affected person who is a party in
 14 a reconsideration hearing held pursuant to 50-5-306(1)
 15 shall pay the department \$500.

16 (4) Fees collected under this section must be
 17 deposited in the state general fund.

18 Section 9. Section 13, Chapter 329, Laws of 1983, is
 19 amended to read:

20 "Section 13. Effective dates. (1) This act is
 21 effective on passage and approval, with delayed effective
 22 dates.

23 (2) On July 1, ~~1987~~ 1989, 50-5-301, 50-5-302, and
 24 50-5-304 through ~~50-5-308~~ 50-5-309, MCA, and ~~sections--8~~
 25 ~~through--10~~ section 9 hereof are repealed unless reenacted by

1 the legislature.

2 (3) On July 1, ~~1987~~ 1989, 50-5-101, MCA, is amended by
 3 deleting subsections (3), (5), (6), ~~(9)~~ (8) through (10),
 4 ~~(13)~~ (14), (15), and ~~(27)~~ (28) unless reenacted by the
 5 legislature.

6 (4) On July 1, ~~1987~~ 1989, 50-5-106, MCA, is amended to
 7 read as follows, unless reenacted by the legislature:

8 "50-5-106. Records and reports required of health care
 9 facilities -- confidentiality. Health care facilities shall
 10 keep records and make reports as required by the department.
 11 Before February 1 of each year, every licensed health care
 12 facility shall submit an annual report for the preceding
 13 calendar year to the department. The report shall be on
 14 forms and contain information specified by the department.
 15 Information received by the department or board through
 16 reports, inspections, or provisions of parts 1 and 2 may not
 17 be disclosed in a way which would identify patients. A
 18 department employee who discloses information which would
 19 identify a patient shall be dismissed from employment and
 20 subject to the provision of 45-7-401, unless the disclosure
 21 was authorized in writing by the patient, his guardian, or
 22 his agent. Information and statistical reports from health
 23 care facilities which are considered necessary by the
 24 department for health planning and resource development
 25 activities will be made available to the public and the

1 health planning agencies within the state."

2 NEW SECTION. Section 10. Codification instruction.
3 Section 8 is intended to be codified as an integral part of
4 Title 50, chapter 5, part 3, and the provisions of Title 50,
5 chapter 5, part 3, apply to section 8.

6 NEW SECTION. Section 11. Extension of authority. Any
7 existing authority of the department of health and
8 environmental sciences to make rules on the subject of the
9 provisions of this act is extended to the provisions of this
10 act.

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

15 NEW SECTION. Section 13. Severability. If a part of
16 this act is invalid, all valid parts that are severable from
17 the invalid part remain in effect. If a part of this act is
18 invalid in one or more of its applications, the part remains
19 in effect in all valid applications that are severable from
20 the invalid applications.

21 NEW SECTION. Section 14. Effective date. This act is
22 effective June 30, 1987.

-End-

STANDING COMMITTEE REPORT

Senate Bill No. 246
March 24, 1987
Page 2 of 2

HOUSE

MARCH 24, 1987

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report SENATE BILL NO. 246

do pass be concurred in as amended
 do not pass be not concurred in statement of intent attached

REP. R. BUDD GOULD, Chairman

1. Page 10, line 13.
Following: "organization,"
Insert: "preferred provider organization,"

2. Page 10.
Following: line 14
Insert: "(36) "Preferred provider organization" means an organization that contracts with health care providers to pay the entire cost of health care services provided to enrolled members who have prepaid for those services and that may pay for a portion of the services provided to an enrollee by a noncontract health care provider."
Renumber: subsequent subsections

3. Page 17, line 21.
Following: "estate,"
Insert: "health maintenance organization, preferred provider organization,"

4. Page 17.
Following: line 22
Insert: "(26) "Preferred provider organization" means an organization that contracts with health care providers to pay the entire cost of health care services provided to enrolled members who have prepaid for those services and that may pay for a portion of the services provided to an enrollee by a noncontract health care provider."
Renumber: subsequent subsections

5. Page 20, line 9
Strike: "\$100,000"
Insert: "\$150,000"

STATEMENT OF INTENT
SENATE BILL 246

House Health and Human Services Committee

A statement of intent is prepared for this bill because the committee felt it was necessary to insure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review, and if possible, make a performance audit, of the certificate of need process and make its recommendation to the 1989 legislature.

REP. WINSLOW IS CARRYING THE BILL IN THE HOUSE OF REPRESENTATIVES

THIRD reading copy (BLUE color)

MS
MS

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

3-27-87
DATE

8:45
TIME

MR. CHAIRMAN: I MOVE TO AMEND SB 246

3rd reading copy (blue) as follows:
Color

AMENDING THE HOUSE HUMAN SERVICES STANDING COMMITTEE REPORT
DATED 3-24-87, WHICH AMENDED SB 246
1) Strip Amendments No. 1, 2, 3, and 4 in their entirety

AMENDING THE 3RD COPY, BLUE
2) Page 10, line 13.
Following: "estate,"
Strike: "health maintenance organization,"

ADOPT
REJECT

Lee Kitelman

Rep. Kitelman