

SENATE BILL NO. 340

INTRODUCED BY WILLIAMS, MARKS, LYNCH, KEATING, CRIPPEN,  
HAGER, WALKER, REGAN, B. BROWN, JACOBSON, DRISCOLL, HARP,  
IVERSON, HARRINGTON, HANNAH, NORMAN, GOOD, MAZUREK,  
BISHOP, NOBLE, PAVLOVICH, QUILICI, D. BROWN, CONNELLY,  
MENAHAH, DARKO, MCCORMICK, WALLIN, WYATT, BOYLAN, SQUIRES,  
DEVLIN, MEYER, PIPINICH, VAUGHN, REAM, PECK, SMITH,  
MCDONOUGH, MANNING, O'KEEFE, STIMATZ, PINSONEAULT,  
T. NELSON, STRIZICH, GOULD, ADDY, DAILY, WHALEN, GUTHRIE

IN THE SENATE

FEBRUARY 4, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE & SAFETY.

FIRST READING.

FEBRUARY 14, 1989

COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 15, 1989

ON MOTION BY CHIEF SPONSOR,  
REPRESENTATIVES ADDY, DAILY, WHALEN,  
GUTHRIE, AND SQUIRES ADDED AS SPONSORS.

PRINTING REPORT.

FEBRUARY 16, 1989

SECOND READING, DO PASS.

FEBRUARY 17, 1989

ENGROSSING REPORT.

FEBRUARY 18, 1989

THIRD READING, PASSED.  
AYES, 49; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1989

INTRODUCED AND REFERRED TO COMMITTEE  
ON HUMAN SERVICES & AGING.

FEBRUARY 20, 1989

FIRST READING.

MARCH 4, 1989

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 10, 1989

SECOND READING, CONCURRED IN.

MARCH 13, 1989

THIRD READING, CONCURRED IN.  
AYES, 79; NOES, 18.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 15, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 17, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *W. H. Hager* *Sen. Hager* BILL NO. *340* *Hager*  
 2 INTRODUCED BY *W. H. Hager* *Sen. Hager*  
 3 *Sen. Hager* *Sen. Hager* *Sen. Hager* *Sen. Hager*  
 4 A BILL FOR AN ACT ENTITLED "AN ACT TO REVISE AND CONTINUE  
 5 THE CERTIFICATE OF NEED LAWS; TO EXEMPT HOSPITALS FROM  
 6 CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES;  
 7 AMENDING SECTION 50-5-301, MCA; SECTION 13, CHAPTER 329,  
 8 LAWS OF 1983; AND SECTION 9, CHAPTER 477, LAWS OF 1987; AND  
 9 PROVIDING AN EFFECTIVE DATE."

10

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

12 **Section 1.** Section 50-5-301, MCA, is amended to read:

13 "50-5-301. (Temporary) When certificate of need is  
 14 required -- definitions. (1) Unless a person has submitted  
 15 an application for and is the holder of a certificate of  
 16 need granted by the department, he may not initiate any of  
 17 the following:

18 (a) the incurring of an obligation by or on behalf of  
 19 a health care facility for any capital expenditure, other  
 20 than to acquire an existing health care facility or to  
 21 replace major medical equipment with equipment performing  
 22 substantially the same function and in the same manner, that  
 23 exceeds the expenditure thresholds established in subsection  
 24 (4). The costs of any studies, surveys, designs, plans,  
 25 working drawings, specifications, and other activities

1 (including staff effort, consulting, and other services)  
 2 essential to the acquisition, improvement, expansion, or  
 3 replacement of any plant or equipment with respect to which  
 4 an expenditure is made must be included in determining if  
 5 the expenditure exceeds the expenditure thresholds.

6 (b) a change in the bed capacity of a health care  
 7 facility through an increase in the number of beds or a  
 8 relocation of beds from one health care facility or site to  
 9 another, unless:

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

14 (ii) a letter of intent is submitted to the department;  
 15 and

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

19 (c) the addition of a health service that is offered  
 20 by or on behalf of a health care facility which was not  
 21 offered by or on behalf of the facility within the 12-month  
 22 period before the month in which the service would be  
 23 offered and which will result in additional annual operating  
 24 and amortization expenses of \$150,000 or more;

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

1 equipment, provided such acquisition would have required a  
2 certificate of need pursuant to subsection (1)(a) or (1)(c)  
3 ~~of this section~~ if it had been made by or on behalf of a  
4 health care facility;

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

8 (i) the person submits the letter of intent required  
9 by 50-5-302(2); and

10 (ii) the department finds that the acquisition will not  
11 significantly increase the cost of care provided or increase  
12 bed capacity;

13 (f) the construction, development, or other  
14 establishment of a health care facility which is being  
15 replaced or which did not previously exist, by any person,  
16 including another type of health care facility;

17 (g) the expansion of the geographical service area of  
18 a home health agency; or

19 (h) the use of hospital beds to provide services to  
20 patients or residents needing only skilled nursing care,  
21 intermediate nursing care, or intermediate developmental  
22 disability care, as those levels of care are defined in  
23 50-5-101; or

24 (i) the provision by a hospital of services for  
25 ambulatory surgical care, home health care, long-term care,

1 inpatient mental health care, inpatient chemical dependency  
2 treatment, inpatient rehabilitation, or personal care.

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

9 (3) For purposes of this part, the following  
10 definitions apply:

11 (a) "Health care facility" or "facility" means a  
12 nonfederal ambulatory surgical facility, home health agency,  
13 hospital, long-term care facility, medical assistance  
14 facility, mental health center with inpatient services,  
15 inpatient chemical dependency facility, rehabilitation  
16 facility with inpatient services, or personal care facility.  
17 The term does not include a hospital.

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

22 (ii) The term does not include adult foster care  
23 licensed under 53-5-303; community homes for the  
24 developmentally disabled, licensed under 53-20-305;  
25 community homes for physically disabled persons, licensed

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

8 (c) "Obligation for capital expenditure" does not  
9 include the authorization of bond sales or the offering or  
10 sale of bonds pursuant to the state long-range building  
11 program under Title 17, chapter 5, part 4, and Title 18,  
12 chapter 2, part 1.

13 (d) "Personal care facility" means an entity which  
14 provides services and care which do not require nursing  
15 skills to more than four persons who are not related to the  
16 owner or administrator by blood or marriage and who need  
17 some assistance in performing the activities of everyday  
18 living. The term does not include those entities excluded  
19 from the definition of "long-term care facility" in  
20 subsection (3)(b).

21 (4) Expenditure thresholds for certificate of need  
22 review are established as follows:

23 (a) For acquisition of equipment and the construction  
24 of any building necessary to house the equipment, the  
25 expenditure threshold is \$750,000.

1 (b) For construction of health care facilities, the  
2 expenditure threshold is \$1,500,000. ~~{Repeated-effective~~  
3 ~~July-17-1989--sec-9--Ch-477--B-1987-}~~"

4 **Section 2.** Section 13, Chapter 329, Laws of 1983, is  
5 amended to read:

6 "Section 13. **Effective dates.** (1) This act is  
7 effective on passage and approval, with delayed effective  
8 dates.

9 (2) On July 1, ~~1987~~ 1991, 50-5-301, 50-5-302, and  
10 50-5-304 through ~~50-5-308~~ 50-5-310, MCA, and ~~sections--8~~  
11 ~~through-10~~ section 9 hereof are repealed unless reenacted by  
12 the legislature.

13 (3) On July 1, ~~1987~~ 1991, 50-5-101, MCA, is amended by  
14 deleting subsections (3), (5), (6), (8), ~~(9)~~, through (10),  
15 ~~(13)~~, (14), (15), and ~~(27)~~ (28) unless reenacted by the  
16 legislature.

17 (4) On July 1, ~~1987~~ 1991, 50-5-106, MCA, is amended to  
18 read as follows, unless reenacted by the legislature:

19 "50-5-106. **Records and reports required of health care**  
20 **facilities -- confidentiality.** Health care facilities shall  
21 keep records and make reports as required by the department.  
22 Before February 1 of each year, every licensed health care  
23 facility shall submit an annual report for the preceding  
24 calendar year to the department. The report shall be on  
25 forms and contain information specified by the department.

1 Information received by the department or board through  
 2 reports, inspections, or provisions of parts 1 and 2 may not  
 3 be disclosed in a way which would identify patients. A  
 4 department employee who discloses information which would  
 5 identify a patient shall be dismissed from employment and  
 6 subject to the provisions of 45-7-401 and 50-16-551, unless  
 7 the disclosure was authorized in writing by the patient, his  
 8 guardian, or his agent in accordance with Title 50, chapter  
 9 16, part 5. Information and statistical reports from health  
 10 care facilities which are considered necessary by the  
 11 department for health planning and resource development  
 12 activities will be made available to the public and the  
 13 health planning agencies within the state."

14 **Section 3.** Section 9, Chapter 477, Laws of 1987, is  
 15 amended to read:

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

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

20 (2) On July 1, ~~1989~~ 1991, 50-5-301, 50-5-302, and  
 21 50-5-304 through ~~50-5-309~~ 50-5-310, MCA, and section 9  
 22 hereof are repealed unless reenacted by the legislature.

23 (3) On July 1, ~~1989~~ 1991, 50-5-101, MCA, is amended by  
 24 deleting subsections (3), (5), (6), (8) through (10), (14),  
 25 (15) and (28) unless reenacted by the legislature.

1 (4) On July 1, ~~1989~~ 1991, 50-5-106, MCA, is amended to  
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 13 department employee who discloses information which would  
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 15 subject to the provisions of 45-7-401 and 50-16-551, unless  
 16 the disclosure was authorized in writing by the patient, his  
 17 guardian, or his agent in accordance with Title 50, chapter  
 18 16, part 5. Information and statistical reports from health  
 19 care facilities which are considered necessary by the  
 20 department for health planning and resource development  
 21 activities will be made available to the public and the  
 22 health planning agencies within the state.""

23 **NEW SECTION. Section 4. Extension of authority.** Any  
 24 existing authority to make rules on the subject of the  
 25 provisions of [this act] is extended to the provisions of

1 [this act].

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

8 NEW SECTION. **Section 6.** Effective date. [This act] is  
9 effective June 30, 1989.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB340, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An Act to revise and continue the Certificate of Need laws; to exempt hospitals from Certificate of Need requirements in certain circumstances; amending Section 50-5-301, MCA, Section 13, Chapter 329, laws of 1983; and Section 9, Chapter 477, laws of 1987; and providing an effective date."

ASSUMPTIONS:

FY90 General Fund \$202,386.

The following assumptions are used to arrive at total fees to be collected:

1. There is no change in the existing Certificate of Need fee structure in the law.
  - a.) Minimum fee of \$500 with 15 applicants in this category. \$7500
  - b.) .3% of capital expenditure for applications over minimum. 15 applicants in this category with an average of \$1,000,000 per application. \$45,000
  - c.) A fee of \$500 per hearing, per applicant with 5 hearings held and 1.5 applicants per hearing. \$3,750


FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Revenue:	\$ 86,250	\$ 56,250	(\$ 30,000)	\$ 86,350	\$ 56,250	(\$ 30,000)
Expenditure:	202,386*	202,386*	-0-	202,885*	202,885*	-0-
Net Effect:	(\$ 116,136)*	(\$ 146,136)*	(\$ 30,000)*	(\$ 116,635)*	(\$ 146,635)*	(\$ 30,000)*

\* The Human Services Appropriations Sub-Committee has acted on language to be included in HB100 similar to the following: If the Certificate of Need (CON) law is not continued or the present CON law is amended, the Budget Director will be authorized to reduce the appropriation authority to a level required to meet the amended law. The present authority may not be increased.

FUND IMPACT:

Reduction in Certificate of Need fees by \$30,000 per year. No significant impact on Department of Health and Environmental Sciences, Health Planning Bureau workload, and costs of providing Health Planning, data collection and Certificate of Need activities remain the same.

  
 RAY SHACKLEFORD, BUDGET DIRECTOR  
 OFFICE OF BUDGET AND PROGRAM PLANNING  
 DATE 2/15/89

  
 BOB WILLIAMS, PRIMARY SPONSOR  
 DATE

Fiscal Note for SB340, as introduced

**SB 340**



APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

## SENATE BILL NO. 340

INTRODUCED BY WILLIAMS, MARKS, LYNCH, KEATING, CRIPPEN,  
HAGER, WALKER, REGAN, B. BROWN, JACOBSON, DRISCOLL, HARP,  
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MCDONOUGH, MANNING, O'KEEFE, STIMATZ, PINSONEAULT,  
T. NELSON, STRIZICH, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CONTINUE  
THE CERTIFICATE OF NEED LAWS; TO EXEMPT HOSPITALS FROM  
CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES;  
AMENDING SECTION 50-5-301, MCA; SECTION 13, CHAPTER 329,  
LAWS OF 1983; AND SECTION 9, CHAPTER 477, LAWS OF 1987; AND  
PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 50-5-301, MCA, is amended to read:

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

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

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

(b) a change in the bed capacity of a health care  
facility through an increase in the number of beds or a  
relocation of beds from one health care facility or site to  
another, unless:

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

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

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

1 (c) the addition of a health service that is offered  
2 by or on behalf of a health care facility which was not  
3 offered by or on behalf of the facility within the 12-month  
4 period before the month in which the service would be  
5 offered and which will result in additional annual operating  
6 and amortization expenses of \$150,000 or more;

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

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

15 (i) the person submits the letter of intent required  
16 by 50-5-302(2); and

17 (ii) the department finds that the acquisition will not  
18 significantly increase the cost of care provided or increase  
19 bed capacity;

20 (f) the construction, development, or other  
21 establishment of a health care facility which is being  
22 replaced or which did not previously exist, by any person,  
23 including another type of health care facility;

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

1 (h) the use of hospital beds to provide services to  
2 patients or residents needing only skilled nursing care,  
3 intermediate nursing care, or intermediate developmental  
4 disability care, as those levels of care are defined in  
5 50-5-101; or

6 (i) the provision by a hospital of services for  
7 ambulatory surgical care, home health care, long-term care,  
8 inpatient mental health care, inpatient chemical dependency  
9 treatment, inpatient rehabilitation, or personal care.

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

16 (3) For purposes of this part, the following  
17 definitions apply:

18 (a) "Health care facility" or "facility" means a  
19 nonfederal ambulatory surgical facility, home health agency,  
20 ~~hospital,~~ long-term care facility, medical assistance  
21 facility, mental health center with inpatient services,  
22 inpatient chemical dependency facility, rehabilitation  
23 facility with inpatient services, or personal care facility.  
24 The term does not include a hospital, EXCEPT TO THE EXTENT  
25 THAT A HOSPITAL IS SUBJECT TO CERTIFICATE OF NEED

1 REQUIREMENTS PURSUANT TO SUBSECTION (1)(I).

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

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

17 (c) "Obligation for capital expenditure" does not  
18 include the authorization of bond sales or the offering or  
19 sale of bonds pursuant to the state long-range building  
20 program under Title 17, chapter 5, part 4, and Title 18,  
21 chapter 2, part 1.

22 (d) "Personal care facility" means an entity which  
23 provides services and care which do not require nursing  
24 skills to more than four persons who are not related to the  
25 owner or administrator by blood or marriage and who need

1 some assistance in performing the activities of everyday  
2 living. The term does not include those entities excluded  
3 from the definition of "long-term care facility" in  
4 subsection (3)(b).

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

7 (a) For acquisition of equipment and the construction  
8 of any building necessary to house the equipment, the  
9 expenditure threshold is \$750,000.

10 (b) For construction of health care facilities, the  
11 expenditure threshold is \$1,500,000. ~~(Repealed-effective~~  
12 ~~July-17-1989--sec-97-Ch-477-b-1987-)~~

13 **Section 2.** Section 13, Chapter 329, Laws of 1983, is  
14 amended to read:

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

18 (2) On July 1, 1987 1991, 50-5-301, 50-5-302, and  
19 50-5-304 through ~~50-5-308~~ 50-5-310, MCA, and ~~sections--8~~  
20 ~~through-10~~ section 9 hereof are repealed unless reenacted by  
21 the legislature.

22 (3) On July 1, 1987 1991, 50-5-101, MCA, is amended by  
23 deleting subsections (3), (5), (6), (8), ~~(9)~~ through (10),  
24 ~~(13)~~, (14), (15), and ~~(27)~~ (28) unless reenacted by the  
25 legislature.

1 (4) On July 1, ~~1987~~ 1991, 50-5-106, MCA, is amended to  
2 read as follows, unless reenacted by the legislature:

3 "50-5-106. Records and reports required of health care  
4 facilities -- confidentiality. Health care facilities shall  
5 keep records and make reports as required by the department.  
6 Before February 1 of each year, every licensed health care  
7 facility shall submit an annual report for the preceding  
8 calendar year to the department. The report shall be on  
9 forms and contain information specified by the department.  
10 Information received by the department or board through  
11 reports, inspections, or provisions of parts 1 and 2 may not  
12 be disclosed in a way which would identify patients. A  
13 department employee who discloses information which would  
14 identify a patient shall be dismissed from employment and  
15 subject to the provisions of 45-7-401 and 50-16-551, unless  
16 the disclosure was authorized in writing by the patient, his  
17 guardian, or his agent in accordance with Title 50, chapter  
18 16, part 5. Information and statistical reports from health  
19 care facilities which are considered necessary by the  
20 department for health planning and resource development  
21 activities will be made available to the public and the  
22 health planning agencies within the state."

23 **Section 3.** Section 9, Chapter 477, Laws of 1987, is  
24 amended to read:

25 "Section 9. Section 13, Chapter 329, Laws of 1983, is

1 amended to read:

2 "Section 13. **Effective dates.** (1) This act is effective  
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7 (3) On July 1, ~~1989~~ 1991, 50-5-101, MCA, is amended by  
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24 subject to the provisions of 45-7-401 and 50-16-551, unless  
25 the disclosure was authorized in writing by the patient, his

1 guardian, or his agent in accordance with Title 50, chapter  
2 16, part 5. Information and statistical reports from health  
3 care facilities which are considered necessary by the  
4 department for health planning and resource development  
5 activities will be made available to the public and the  
6 health planning agencies within the state.""

7 NEW SECTION. Section 4. Extension of authority. Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

11 NEW SECTION. Section 5. Severability. If a part of  
12 [this act] is invalid, all valid parts that are severable  
13 from the invalid part remain in effect. If a part of [this  
14 act] is invalid in one or more of its applications, the part  
15 remains in effect in all valid applications that are  
16 severable from the invalid applications.

17 NEW SECTION. Section 6. Effective date. [This act] is  
18 effective June 30, 1989.

-End-

## SENATE BILL NO. 340

INTRODUCED BY WILLIAMS, MARKS, LYNCH, KEATING, CRIPPEN,  
HAGER, WALKER, REGAN, B. BROWN, JACOBSON, DRISCOLL, HARP,  
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DEVLIN, MEYER, PIPINICH, VAUGHN, REAM, PECK, SMITH,  
MCDONOUGH, MANNING, O'KEEFE, STIMATZ, PINSONEAULT,  
T. NELSON, STRIZICH, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CONTINUE  
THE CERTIFICATE OF NEED LAWS; TO EXEMPT HOSPITALS FROM  
CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES;  
AMENDING SECTION 50-5-301, MCA; SECTION 13, CHAPTER 329,  
LAWS OF 1983; AND SECTION 9, CHAPTER 477, LAWS OF 1987; AND  
PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 50-5-301, MCA, is amended to read:

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

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

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

(b) a change in the bed capacity of a health care  
facility through an increase in the number of beds or a  
relocation of beds from one health care facility or site to  
another, unless:

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

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

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

1 (c) the addition of a health service that is offered  
2 by or on behalf of a health care facility which was not  
3 offered by or on behalf of the facility within the 12-month  
4 period before the month in which the service would be  
5 offered and which will result in additional annual operating  
6 and amortization expenses of \$150,000 or more;

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

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

15 (i) the person submits the letter of intent required  
16 by 50-5-302(2); and

17 (ii) the department finds that the acquisition will not  
18 significantly increase the cost of care provided or increase  
19 bed capacity;

20 (f) the construction, development, or other  
21 establishment of a health care facility which is being  
22 replaced or which did not previously exist, by any person,  
23 including another type of health care facility;

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

1 (h) the use of hospital beds to provide services to  
2 patients or residents needing only skilled nursing care,  
3 intermediate nursing care, or intermediate developmental  
4 disability care, as those levels of care are defined in  
5 50-5-101; or

6 (i) the provision by a hospital of services for  
7 ambulatory surgical care, home health care, long-term care,  
8 inpatient mental health care, inpatient chemical dependency  
9 treatment, inpatient rehabilitation, or personal care.

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

16 (3) For purposes of this part, the following  
17 definitions apply:

18 (a) "Health care facility" or "facility" means a  
19 nonfederal ambulatory surgical facility, home health agency,  
20 hospital, long-term care facility, medical assistance  
21 facility, mental health center with inpatient services,  
22 inpatient chemical dependency facility, rehabilitation  
23 facility with inpatient services, or personal care facility.  
24 The term does not include a hospital, EXCEPT TO THE EXTENT  
25 THAT A HOSPITAL IS SUBJECT TO CERTIFICATE OF NEED

1 REQUIREMENTS PURSUANT TO SUBSECTION (1)(I).

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

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

17 (c) "Obligation for capital expenditure" does not  
18 include the authorization of bond sales or the offering or  
19 sale of bonds pursuant to the state long-range building  
20 program under Title 17, chapter 5, part 4, and Title 18,  
21 chapter 2, part 1.

22 (d) "Personal care facility" means an entity which  
23 provides services and care which do not require nursing  
24 skills to more than four persons who are not related to the  
25 owner or administrator by blood or marriage and who need

1 some assistance in performing the activities of everyday  
2 living. The term does not include those entities excluded  
3 from the definition of "long-term care facility" in  
4 subsection (3)(b).

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

7 (a) For acquisition of equipment and the construction  
8 of any building necessary to house the equipment, the  
9 expenditure threshold is \$750,000.

10 (b) For construction of health care facilities, the  
11 expenditure threshold is \$1,500,000. ~~{Repealed-effective~~  
12 ~~July 1, 1989--sec-97-Ch-477, br-1987-}~~"

13 **Section 2.** Section 13, Chapter 329, Laws of 1983, is  
14 amended to read:

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

18 (2) On July 1, 1987 1991, 50-5-301, 50-5-302, and  
19 50-5-304 through 50-5-308 50-5-310, MCA, and ~~sections--8~~  
20 ~~through 10~~ section 9 hereof are repealed unless reenacted by  
21 the legislature.

22 (3) On July 1, 1987 1991, 50-5-101, MCA, is amended by  
23 deleting subsections (3), (5), (6), (8), ~~(9)~~, through (10),  
24 ~~(13)~~, (14), (15), and ~~(27)~~ (28) unless reenacted by the  
25 legislature.



1 (4) On July 1, ~~1987~~ 1991, 50-5-106, MCA, is amended to  
2 read as follows, unless reenacted by the legislature:

3 "50-5-106. Records and reports required of health care  
4 facilities -- confidentiality. Health care facilities shall  
5 keep records and make reports as required by the department.  
6 Before February 1 of each year, every licensed health care  
7 facility shall submit an annual report for the preceding  
8 calendar year to the department. The report shall be on  
9 forms and contain information specified by the department.  
10 Information received by the department or board through  
11 reports, inspections, or provisions of parts 1 and 2 may not  
12 be disclosed in a way which would identify patients. A  
13 department employee who discloses information which would  
14 identify a patient shall be dismissed from employment and  
15 subject to the provisions of 45-7-401 and 50-16-551, unless  
16 the disclosure was authorized in writing by the patient, his  
17 guardian, or his agent in accordance with Title 50, chapter  
18 16, part 5. Information and statistical reports from health  
19 care facilities which are considered necessary by the  
20 department for health planning and resource development  
21 activities will be made available to the public and the  
22 health planning agencies within the state."

23 **Section 3.** Section 9, Chapter 477, Laws of 1987, is  
24 amended to read:

25 "Section 9. Section 13, Chapter 329, Laws of 1983, is

1 amended to read:

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

4 (2) On July 1, ~~1989~~ 1991, 50-5-301, 50-5-302, and  
5 50-5-304 through ~~50-5-309~~ 50-5-310, MCA, and section 9  
6 hereof are repealed unless reenacted by the legislature.

7 (3) On July 1, ~~1989~~ 1991, 50-5-101, MCA, is amended by  
8 deleting subsections (3), (5), (6), (8) through (10), (14),  
9 (15) and (28) unless reenacted by the legislature.

10 (4) On July 1, ~~1989~~ 1991, 50-5-106, MCA, is amended to  
11 read as follows, unless reenacted by the legislature:

12 "50-5-106. Records and reports required of health care  
13 facilities -- confidentiality. Health care facilities shall  
14 keep records and make reports as required by the department.  
15 Before February 1 of each year, every licensed health care  
16 facility shall submit an annual report for the preceding  
17 calendar year to the department. The report shall be on  
18 forms and contain information specified by the department.  
19 Information received by the department or board through  
20 reports, inspections, or provisions of parts 1 and 2 may not  
21 be disclosed in a way which would identify patients. A  
22 department employee who discloses information which would  
23 identify a patient shall be dismissed from employment and  
24 subject to the provisions of 45-7-401 and 50-16-551, unless  
25 the disclosure was authorized in writing by the patient, his

1 guardian, or his agent in accordance with Title 50, chapter  
2 16, part 5. Information and statistical reports from health  
3 care facilities which are considered necessary by the  
4 department for health planning and resource development  
5 activities will be made available to the public and the  
6 health planning agencies within the state."""

7 NEW SECTION. **Section 4. Extension of authority.** Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

11 NEW SECTION. **Section 5. Severability.** If a part of  
12 [this act] is invalid, all valid parts that are severable  
13 from the invalid part remain in effect. If a part of [this  
14 act] is invalid in one or more of its applications, the part  
15 remains in effect in all valid applications that are  
16 severable from the invalid applications.

17 NEW SECTION. **Section 6. Effective date.** [This act] is  
18 effective June 30, 1989.

-End-

STANDING COMMITTEE REPORT

March 4, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that SENATE BILL 340 (blue reading copy), with statement of intent included, be concurred in as amended.

Signed:   
Stella Jean Hansen, Chairman

[REP. MARKS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendment read:

1. Page 1.

Following: line 16

Insert: " STATEMENT OF INTENT

It is the legislature's intent to exclude acute care hospitals from certificate of need requirements, except in certain limited circumstances that are enumerated in subsections 50-5-301 (1) (h) and 50-5-301 (1) (i). The provision by a hospital of services under either of those subsections is intended to include construction, conversion, or expansion of bed capacity."

HOUSE

510948SC.HBV

SB 340

RT

## SENATE BILL NO. 340

INTRODUCED BY WILLIAMS, MARKS, LYNCH, KEATING, CRIPPEN,  
HAGER, WALKER, REGAN, B. BROWN, JACOBSON, DRISCOLL, HARP,  
IVERSON, HARRINGTON, HANNAH, NORMAN, GOOD, MAZUREK,  
BISHOP, NOBLE, PAVLOVICH, QUILICI, D. BROWN, CONNELLY,  
MENAHAN, DARKO, MCCORMICK, WALLIN, WYATT, BOYLAN, SQUIRES,  
DEVLIN, MEYER, PIPINICH, VAUGHN, REAM, PECK, SMITH,  
MCDONOUGH, MANNING, O'KEEFE, STIMATZ, PINSONEAULT,  
T. NELSON, STRIZICH, GOULD, ADDY, DAILY, WHALEN, GUTHRIE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CONTINUE  
THE CERTIFICATE OF NEED LAWS; TO EXEMPT HOSPITALS FROM  
CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES;  
AMENDING SECTION 50-5-301, MCA; SECTION 13, CHAPTER 329,  
LAWS OF 1983; AND SECTION 9, CHAPTER 477, LAWS OF 1987; AND  
PROVIDING AN EFFECTIVE DATE."

## STATEMENT OF INTENT

It is the legislature's intent to exclude acute care  
hospitals from certificate of need requirements, except in  
certain limited circumstances that are enumerated in  
subsections 50-5-301(1)(h) and 50-5-301(1)(i). The provision  
by a hospital of services under either of those subsections  
is intended to include construction, conversion, or  
expansion of bed capacity.

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

**Section 1.** Section 50-5-301, MCA, is amended to read:

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

(a) the incurring of an obligation by or on behalf of  
a health care facility for any capital expenditure, other  
than to acquire an existing health care facility or to  
replace major medical equipment with equipment performing  
substantially the same function and in the same manner, that  
exceeds the expenditure thresholds established in subsection  
(4). The costs of any studies, surveys, designs, plans,  
working drawings, specifications, and other activities  
(including staff effort, consulting, and other services)  
essential to the acquisition, improvement, expansion, or  
replacement of any plant or equipment with respect to which  
an expenditure is made must be included in determining if  
the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care  
facility through an increase in the number of beds or a  
relocation of beds from one health care facility or site to  
another, unless:

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

5 (ii) a letter of intent is submitted to the department;  
6 and

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

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

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

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

24 (i) the person submits the letter of intent required  
25 by 50-5-302(2); and

1 (ii) the department finds that the acquisition will not  
2 significantly increase the cost of care provided or increase  
3 bed capacity;

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

15 (i) the provision by a hospital of services for  
16 ambulatory surgical care, home health care, long-term care,  
17 inpatient mental health care, inpatient chemical dependency  
18 treatment, inpatient rehabilitation, or personal care.

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

25 (3) For purposes of this part, the following

1 definitions apply:

2 (a) "Health care facility" or "facility" means a  
3 nonfederal ambulatory surgical facility, home health agency,  
4 hospital, long-term care facility, medical assistance  
5 facility, mental health center with inpatient services,  
6 inpatient chemical dependency facility, rehabilitation  
7 facility with inpatient services, or personal care facility.  
8 The term does not include a hospital, EXCEPT TO THE EXTENT  
9 THAT A HOSPITAL IS SUBJECT TO CERTIFICATE OF NEED  
10 REQUIREMENTS PURSUANT TO SUBSECTION (1)(I).

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

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

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

6 (d) "Personal care facility" means an entity which  
7 provides services and care which do not require nursing  
8 skills to more than four persons who are not related to the  
9 owner or administrator by blood or marriage and who need  
10 some assistance in performing the activities of everyday  
11 living. The term does not include those entities excluded  
12 from the definition of "long-term care facility" in  
13 subsection (3)(b).

14 (4) Expenditure thresholds for certificate of need  
15 review are established as follows:

16 (a) For acquisition of equipment and the construction  
17 of any building necessary to house the equipment, the  
18 expenditure threshold is \$750,000.

19 (b) For construction of health care facilities, the  
20 expenditure threshold is \$1,500,000. ~~{Repeated--effective~~  
21 ~~July 17-1989--sec-97-Ch-477-B-1987-}~~

22 **Section 2.** Section 13, Chapter 329, Laws of 1983, is  
23 amended to read:

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

1 dates.

2 (2) On July 1, ~~1987~~ 1991, 50-5-301, 50-5-302, and  
3 50-5-304 through ~~50-5-308~~ 50-5-310, MCA, and sections-8  
4 through-10 section 9 hereof are repealed unless reenacted by  
5 the legislature.

6 (3) On July 1, ~~1987~~ 1991, 50-5-101, MCA, is amended by  
7 deleting subsections (3), (5), (6), (8), ~~†9†~~ through (10),  
8 ~~†13†~~ (14), (15), and ~~†27†~~ (28) unless reenacted by the  
9 legislature.

10 (4) On July 1, ~~1987~~ 1991, 50-5-106, MCA, is amended to  
11 read as follows, unless reenacted by the legislature:

12 "50-5-106. Records and reports required of health care  
13 facilities -- confidentiality. Health care facilities shall  
14 keep records and make reports as required by the department.  
15 Before February 1 of each year, every licensed health care  
16 facility shall submit an annual report for the preceding  
17 calendar year to the department. The report shall be on  
18 forms and contain information specified by the department.  
19 Information received by the department or board through  
20 reports, inspections, or provisions of parts 1 and 2 may not  
21 be disclosed in a way which would identify patients. A  
22 department employee who discloses information which would  
23 identify a patient shall be dismissed from employment and  
24 subject to the provisions of 45-7-401 and 50-16-551, unless  
25 the disclosure was authorized in writing by the patient, his

1 guardian, or his agent in accordance with Title 50, chapter  
2 16, part 5. Information and statistical reports from health  
3 care facilities which are considered necessary by the  
4 department for health planning and resource development  
5 activities will be made available to the public and the  
6 health planning agencies within the state."

7 **Section 3.** Section 9, Chapter 477, Laws of 1987, is  
8 amended to read:

9 "Section 9. Section 13, Chapter 329, Laws of 1983, is  
10 amended to read:

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

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14 50-5-304 through ~~50-5-309~~ 50-5-310, MCA, and section 9  
15 hereof are repealed unless reenacted by the legislature.

16 (3) On July 1, ~~1989~~ 1991, 50-5-101, MCA, is amended by  
17 deleting subsections (3), (5), (6), (8) through (10), (14),  
18 (15) and (28) unless reenacted by the legislature.

19 (4) On July 1, ~~1989~~ 1991, 50-5-106, MCA, is amended to  
20 read as follows, unless reenacted by the legislature:

21 "50-5-106. Records and reports required of health care  
22 facilities -- confidentiality. Health care facilities shall  
23 keep records and make reports as required by the department.  
24 Before February 1 of each year, every licensed health care  
25 facility shall submit an annual report for the preceding

1 calendar year to the department. The report shall be on  
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 8 subject to the provisions of 45-7-401 and 50-16-551, unless  
 9 the disclosure was authorized in writing by the patient, his  
 10 guardian, or his agent in accordance with Title 50, chapter  
 11 16, part 5. Information and statistical reports from health  
 12 care facilities which are considered necessary by the  
 13 department for health planning and resource development  
 14 activities will be made available to the public and the  
 15 health planning agencies within the state.""

16 NEW SECTION. Section 4. Extension of authority. Any  
 17 existing authority to make rules on the subject of the  
 18 provisions of [this act] is extended to the provisions of  
 19 [this act].

20 NEW SECTION. Section 5. Severability. If a part of  
 21 [this act] is invalid, all valid parts that are severable  
 22 from the invalid part remain in effect. If a part of [this  
 23 act] is invalid in one or more of its applications, the part  
 24 remains in effect in all valid applications that are  
 25 severable from the invalid applications.

1 NEW SECTION. Section 6. Effective date. [This act] is  
 2 effective June 30, 1989.

-End-