

SENATE BILL NO. 118

INTRODUCED BY TOWE

IN THE SENATE

JANUARY 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
MARCH 13, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN AS AMENDED.
	ON MOTION, REREFERRED TO COMMITTEE ON APPROPRIATIONS.
APRIL 5, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 7, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
APRIL 12, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.

APRIL 14, 1993

SECOND READING, CONCURRED IN AS  
AMENDED.

ON MOTION, RULES SUSPENDED TO ALLOW  
THIRD READING.

THIRD READING, CONCURRED IN.  
AYES, 92; NOES, 8.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 16, 1993

ON MOTION, RULES SUSPENDED TO ALLOW  
LATE TRANSMITTAL.

APRIL 17, 1993

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 19, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 20, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1                   *Senate* BILL NO. *118*  
2 INTRODUCED BY *DWE*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LICENSING  
5 CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES;  
6 ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF  
7 NEED REQUIREMENTS; ELIMINATING ADULT FOSTER FAMILY CARE  
8 HOMES; AMENDING SECTIONS 50-5-101, 50-5-226, 50-5-227,  
9 50-5-301, 50-8-101, 52-3-811, AND 76-2-411, MCA; REPEALING  
10 SECTIONS 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305,  
11 52-3-311, 52-3-312, 52-3-313, AND 52-3-314, MCA; AND  
12 PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

15       A statement of intent is required for this bill because  
16       50-5-226 requires the department of health and environmental  
17       sciences to adopt standards governing personal-care  
18       facilities and because 50-5-227 requires the department to  
19       adopt rules implementing two categories of personal-care  
20       facilities.

21           The legislature intends that the standards to be adopted  
22   under 50-5-226 involve only those basic aspects of care that  
23   are not already part of local ordinances and that the rules  
24   do not overregulate or require more than absolutely  
25   necessary for the safety of the residents because, in many

1 instances, the facilities in which residents will live are  
2 the homes of those persons managing them.

3 The legislature recognizes a preference by many senior  
4 citizens and their relatives for seniors to live in a home  
5 setting in a private home or residence rather than in a  
6 nursing home. The legislature further recognizes that there  
7 are a number of persons in this state who are willing to  
8 care for seniors in their own homes or in homes operated by  
9 them in which the home setting is preserved. The legislature  
10 further recognizes that the quality of care given in these  
11 homes or residences may be preferable under many  
12 circumstances because the patient-to-staff ratio is  
13 considerably lower than in a nursing home and the home  
14 setting avoids the institutional atmosphere and associated  
15 problems.

16 Finally, the legislature recognizes that these homes can  
17 be considerably less expensive than nursing homes.  
18 Therefore, the legislature specifically finds that the use  
19 of private homes or residences in which the home setting is  
20 preserved is to be recognized as the preferred treatment for  
21 all persons who can receive adequate care in such a  
22 facility.

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

25        **Section 1.** Section 50-5-101, MCA, is amended to read:

1       "50-5-101. Definitions. As used in parts 1 through 4 of  
2 this chapter, unless the context clearly indicates  
3 otherwise, the following definitions apply:

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

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

9       (3) "Affected person" means an applicant for  
10 certificate of need, a member of the public who will be  
11 served by the proposal, a health care facility located in  
12 the geographic area affected by the application, an agency  
13 which that establishes rates for health care facilities, a  
14 third-party payer who reimburses health care facilities in  
15 the area affected by the proposal, or an agency which that  
16 plans or assists in planning for such health care  
17 facilities.

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

23       (5) "Batch" means those letters of intent to seek  
24 approval for new beds or major medical equipment that are  
25 accumulated during a single batching period.

1       (6) "Batching period" means a period, not exceeding 1  
2 month, established by department rule during which letters  
3 of intent to seek approval for new beds or major medical  
4 equipment are accumulated pending further processing of all  
5 letters of intent within the batch.

6       (7) "Board" means the board of health and environmental  
7 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 authorization  
17 by the department for a person to proceed with a proposal  
18 subject to 50-5-301.

19       (10) "Challenge period" means a period, not exceeding 1  
20 month, established by department rule during which any a  
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 that creates behavioral or health problems  
3 and endangers the health, interpersonal relationships, or  
4 economic function of an individual or the public health,  
5 welfare, or safety.

6 (12) "Clinical laboratory" means a facility for the  
7 microbiological, serological, chemical, hematological,  
8 radiobioassay, cytological, immuno-hematological,  
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 (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 (14) "Comparative review" means a joint review of two or  
20 more certificate of need applications which that are  
21 determined by the department to be competitive in that the  
22 granting of a certificate of need to one of the applicants  
23 would substantially prejudice the department's review of the  
24 other applications.

25 (15) "Construction" means the physical erection of a

1 health care facility and any stage ~~thereof~~ of the physical  
2 erection, including ground breaking, or remodeling,  
3 replacement, or renovation of an existing health care  
4 facility.

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

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

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

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

centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

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

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

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical

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

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

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

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

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

(26) "Kidney treatment center" means a facility which that specializes in treatment of kidney diseases, including

1 freestanding hemodialysis units.

2 (27) (a) "Long-term care facility" means a facility or  
3 part ~~thereof~~ which of a facility that provides skilled  
4 nursing care, intermediate nursing care, or intermediate  
5 developmental disability care to a total of two or more  
6 ~~persons~~ individuals or that provides personal care ~~to more~~  
7 ~~than four persons who are not related to the owner or~~  
8 ~~administrator by blood or marriage.~~ The term does not  
9 include ~~adult foster care licensed under 52-3-303,~~ community  
10 homes for the developmentally disabled licensed under  
11 53-20-305, community homes for ~~persons~~ individuals with  
12 severe disabilities licensed under 52-4-203, youth care  
13 facilities licensed under 41-3-1142, hotels, motels,  
14 boardinghouses, roominghouses, or similar accommodations  
15 providing for transients, students, or ~~persons~~ individuals  
16 not requiring institutional health care, or juvenile and  
17 adult correctional facilities operating under the authority  
18 of the department of corrections and human services.

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~~ individuals  
6 with related problems.

7 (e) "Personal care" means the provision of services and  
8 ~~care which do not require nursing skills to,~~ which comply  
9 with 50-5-226 through 50-5-230 and rules of the department,  
10 for residents needing some assistance in performing the  
11 activities of daily living.

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

16 (29) "Medical assistance facility" means a facility  
17 that:

18 (a) provides inpatient care to ill or injured ~~persons~~  
19 individuals prior to their transportation to a hospital or  
20 provides inpatient medical care to ~~persons~~ individuals  
21 needing that care for a period of no longer than 96 hours;  
22 and

23 (b) either is located in a county with fewer than six  
24 residents per square mile or is located more than 35 road  
25 miles from the nearest hospital.

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

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

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

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

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

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

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

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

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

(39) "Resident" means a-person an individual who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential



psychiatric care to persons individuals under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

**Section 2.** Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care facilities. (1) A personal-care facility may ~~not have as a resident a person who is:~~

~~(a) in need of medical or physical restraints;~~

~~(b) nonambulatory or bedridden;~~

~~(c) totally incontinent; or~~

~~(d) less than 18 years of age~~ provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

~~(2)~~(4) The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, his the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(2)(b)~~ (4)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident; and

(d) standards for operating a personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility."

**Section 3.** Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing personal-care facilities. (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A--a facility providing personal care to six or more residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B--a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

~~(2)(3)~~ The department may by rule establish license fees, inspection fees, and fees for patient screening. Such fees Fees must be reasonably related to service costs."

**Section 4.** Section 50-5-301, MCA, is amended to read:

"50-5-301. 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 the person 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;

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

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

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

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

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

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

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

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

(i) the provision by a hospital of services for

1 ambulatory surgical care, home health care, long-term care,  
2 inpatient mental health care, inpatient chemical dependency  
3 treatment, or inpatient rehabilitation, ~~or personal care~~.

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

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

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

19 (i) a hospital, except to the extent that a hospital is  
20 subject to certificate of need requirements pursuant to  
21 subsection (1)(i); or

22 (ii) an office of a private physician, dentist, or other  
23 physical or mental health care professionals, including  
24 chemical dependency counselors.

25 (b) (i) "Long-term care facility" means an entity which

1 that provides skilled nursing care, intermediate nursing  
2 care, or intermediate developmental disability care, as  
3 defined in 50-5-101, to a total of two or more persons  
4 individuals.

5 (ii) The term does not include ~~adult--foster--care~~  
6 ~~personal-care facilities~~, licensed under 52-3-303 50-5-227;  
7 community homes for the developmentally disabled, licensed  
8 under 53-20-305; community homes for persons with severe  
9 disabilities, licensed under 52-4-203; boarding or foster  
10 homes for children, licensed under 41-3-1142; hotels,  
11 motels, boardinghouses, roominghouses, or similar  
12 accommodations providing for transients, students, or  
13 persons individuals not requiring institutional health care;  
14 or juvenile and adult correctional facilities operating  
15 under the authority of the department of corrections and  
16 human services.

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~~

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

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

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

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

**Section 5.** Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of health and environmental sciences, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, and community homes for physically disabled persons, and adult-foster-care homes; and

(ii) youth care facilities; and

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

**Section 6.** Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have

1 reasonable cause to suspect that an older person or a  
2 developmentally disabled person known to them in their  
3 professional or official capacities has been subjected to  
4 abuse, exploitation, or neglect, they shall:

5 (a) if the person is not a resident of a long-term care  
6 facility, report the matter to:

7 (i) the department of family services or its local  
8 affiliate;

9 (ii) the county attorney of the county in which the  
10 person resides or in which the acts that are the subject of  
11 the report occurred;

12 (b) if the person is a resident of a long-term care  
13 facility, report the matter to the long-term care ombudsman  
14 appointed under the provisions of 42 U.S.C. 3027(a)(12) and  
15 to the department of health and environmental sciences. The  
16 department shall investigate the matter pursuant to its  
17 authority in 50-5-204 and, if it finds any allegations of  
18 abuse, exploitation, or neglect contained in the report to  
19 be substantially true, forward a copy of the report to the  
20 department of family services and to the county attorney as  
21 provided in subsection (1)(a)(ii).

22 (2) If the report required in subsection (1) involves  
23 an act or omission of the department of family services  
24 which that may be construed as abuse, exploitation, or  
25 neglect, a copy of the report may not be sent to the

1 department but must be sent instead to the county attorney  
2 of the county in which the older person or the  
3 developmentally disabled person resides or in which the acts  
4 that are the subject of the report occurred.

5 (3) Professionals and other persons required to report  
6 are:

7 (a) a physician, resident, intern, professional or  
8 practical nurse, physician's assistant, or member of a  
9 hospital staff engaged in the admission, examination, care,  
10 or treatment of persons;

11 (b) an osteopath, dentist, denturist, chiropractor,  
12 optometrist, podiatrist, medical examiner, coroner, or any  
13 other health or mental health professional;

14 (c) an ambulance attendant;

15 (d) a social worker or other employee of the state, a  
16 county, or a municipality assisting an older person or a  
17 developmentally disabled person in the application for or  
18 receipt of public assistance payments or services;

19 (e) a person who maintains or is employed by a  
20 roominghouse, retirement home, nursing home, group home, or  
21 adult-foster-care-home personal-care facility;

22 (f) an attorney, unless he the attorney acquired  
23 knowledge of the facts required to be reported from a client  
24 and the attorney-client privilege applies; and

25 (g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

**Section 7.** Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which that does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of ~~health--and--environmental sciences~~ corrections and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed ~~adult---foster---family---care---home~~ personal-care facility."

**NEW SECTION. Section 8. Repealer.** Sections 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305, 52-3-311, 52-3-312, 52-3-313, and 52-3-314, MCA, are repealed.

**NEW SECTION. Section 9. Applicability.** [This act] and the rules of the department of health and environmental sciences adopted pursuant to [sections 2 and 3] apply to licenses for personal care facilities issued or renewed after July 1, 1994.

**NEW SECTION. Section 10. Effective dates.** (1)

[Sections 2, 3, 9, and this section] are effective on passage and approval.

(2) [Sections 1 and 4 through 8] are effective July 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0118, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act changing the licensing categories and conditions for personal-care facilities, eliminating personal-care facilities from certificate of need requirements, and eliminating adult foster family care homes effective July 1, 1994.

ASSUMPTIONS:

Department of Health and Environmental Sciences

1. Elimination of the Adult Foster Family Care Act and converting adult foster care homes into personal care homes will require a consolidation of licensure functions of DHES (personal care) and DFS (adult foster care), thus increasing the current number of personal care facilities from 26 to 146.
2. The licensure consolidation and elimination of this service from certificate of need review should result in approximately 40 additional unlicensed providers to become licensed.
3. The personnel and operating costs for facility licensure are based on current costs for licensure and survey activities of personal care facilities.
4. The costs are based on annual costs if all 146 to 186 facilities are to be surveyed over a twelve month period.
5. The costs of licensure consolidation are based on costs associated with 3 additional FTE with operational, equipment, and administrative costs included.
6. An option to additional FTEs in the Department would be to contract the survey activities out to qualified individuals. This would eliminate the need for additional FTEs, but would not decrease the costs to survey and license these facilities.
7. Estimated cost for rulemaking is \$25,000. That cost includes personnel and operating costs.
8. Estimated costs for survey operation would be funded by state general fund and recovered and returned to the state general fund by assessing survey and other associated program costs to the providers as authorized by existing law 50-5-227(2), MCA.
9. If 186 facilities are to be licensed and surveyed under this bill, it is estimated that revenue from each survey would be approximately \$1,049 which will be returned to the general fund. Total funds:  $186 \times \$1,049 = \$195,114$ .

Department of Social and Rehabilitation Services

10. There is no fiscal impact on SRS personal services or operating costs.
11. There will be no measurable impact on nursing home utilization and, therefore, no more than minimal, insignificant general fund savings because personal care homes already are available, but they are not affordable. The bill will help private pay people who can afford to meet their personal care needs.
12. SRS applied for a Medicaid federal waiver to achieve the objectives stated in the intent of the proposed bill, but has been advised it is not going to be approved.

(Continued)

*Dave Lewis*

DAVE LEWIS, BUDGET DIRECTOR  
Office of Budget and Program Planning

*1-15-93*

DATE

THOMAS E. TOWE, PRIMARY SPONSOR

DATE

*1/20/93*

Fiscal Note for SB0118, as introduced

*SB118*



ASSUMPTIONS: (Continued)  
Department of Family Services

- 13. This bill would not generate any new revenue.
- 14. This bill would eliminate the lower-rate adult foster care category, and would increase the rate to personal care by \$41.25 a month.
- 15. This bill would change the category of 105 persons currently on the caseload, for a total cost increase of \$51,975 per year. (105 X \$41.25 X 12 = \$51,975)
- 16. The estimated increase in individuals served is 25 persons annually, based on prior years information. However, this estimate could be low if in fact the personal care homes are more popular than anticipated. These additional cases would be at the personal care rate of \$94.00 a month for an annual increase of \$28,200.
- 17. The annual licensing would no longer be completed by the department. There would be no financial impact from this action.

FISCAL IMPACT:  
Department of Health and Environmental Sciences  
Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	0.50	0.50	0.00	3.00	3.00
Personnel Services	0	\$15,000	\$15,000	0	\$104,374	\$104,374
Operating Costs	<u>0</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>0</u>	<u>\$90,740</u>	<u>\$90,740</u>
Total	0	\$25,000	\$25,000	0	\$195,114	\$195,114
Funding: General Fund	0	\$25,000	\$25,000	0	\$195,114	\$195,114

Revenues:

General Fund	0	0	0	0	\$195,114	\$195,114
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Department of Family Services

Expenditures:

	<u>FY94</u>			<u>FY95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Benefits	961,260	1,041,435	80,175	961,260	1,069,635	108,375
Funding: General Fund	961,260	1,041,435	80,175	961,260	1,069,635	108,375
<u>Combined Net Impact:</u>						
General Fund Cost	0	(105,175)	(105,175)	0	(108,375)	(108,375)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Future care payments might grow due to preference for private home care.

TECHNICAL NOTES: The bill does not specify the agency responsible for the screening.

SB 118

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0118, third reading.

DESCRIPTION OF PROPOSED LEGISLATION: A bill to change licensure categories of personal care facilities.

ASSUMPTIONS:

Department of Health and Environmental Sciences (DHES)

1. Funding for the health planning and certificate of need (CON) program is not in the executive budget. If CON is not funded, there will be no staff to perform the review.
2. If CON is funded, removal of personal care facilities from review will have no significant impact on the health planning program expenditures.
3. The bill was amended to not consolidate licensure functions of adult foster care homes (currently under DFS) and personal care homes (currently under DHES). Therefore, the number of personal care facilities will not increase from 26 to 146 at the effective date of this act as originally estimated. It is unknown how many facilities will pursue licensure under new category of personal care authorized under the bill.
4. The elimination of personal care from CON review should encourage some currently unlicensed providers to seek licensure, however we are unable to estimate how many at this time.
5. We are not able to calculate any increase in personnel and operating costs for increased facility licensure, since we do not know how many providers will pursue this new licensure category.
6. Because of the potential for controversy, no outside involvement is expected in drafting standards (except as is provided in the rulemaking process as required in the Montana Administrative Procedure Act).
7. Estimated costs for survey operation due to an increase in providers under the new licensure category is unknown because it is uncertain how many facilities will pursue this new license.

Department of Social and Rehabilitation Services (SRS)


8. There is no fiscal impact to SRS as a result of SB-118.
9. There will be no measurable impact on nursing home utilization and no measurable general fund savings. Personal care homes are available already, but they are not affordable. SB-118 will help private pay people who can afford to meet their personal care needs.
10. SRS has applied to the Health Care Financing Administration (HCFA) for a federal Medicaid waiver to achieve the objective stated in the intent of the proposal, but has been advised that the waiver will not be approved.

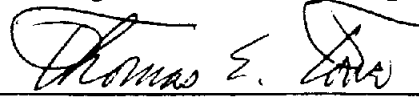
Department of Family Services (DFS)

11. This bill would not generate any new revenue.
12. DFS would make an administrative rule change to exempt residents of category (B) personal care facilities from state supplemental payments. This would result in no additional payments from DFS for residents not currently covered.

FISCAL IMPACT: None. (Please see technical note below.)

TECHNICAL NOTES: Without an administrative rule change, residents of category (B) facilities would be eligible for state supplemental payments. These payments would cost an estimated \$40,575 in general fund during each year of the biennium.

 3-8-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 4/15/93  
THOMAS E. "TOM" TOWE, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0118, third reading SB 118-#2

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0118, reference bill as amended.

**DESCRIPTION OF PROPOSED LEGISLATION:** A bill to change licensure categories of personal care facilities and prohibit supplementary payments for residents of certain personal care facilities.

**ASSUMPTIONS:**

**Department of Health and Environmental Sciences (DHES):**

1. Funding for the health planning and certificate of need (CON) program is not in the executive budget. If CON is not funded, there will be no staff to perform the review.
2. If CON is funded, removal of personal care facilities from review will have no significant impact on the health planning program expenditures.
3. The bill was amended to not consolidate licensure functions of adult foster care homes (currently under DFS) and personal care homes (currently under DHES). Therefore, the number of personal care facilities will not increase from 26 to 146 at the effective date of this act as originally estimated. It is unknown how many facilities will pursue licensure under new category of personal care authorized under the bill.
4. The elimination of personal care from CON review should encourage some currently unlicensed providers to seek licensure, however DHES is unable to estimate how many at this time.
5. DHES is not able to calculate any increase in personnel and operating costs for increased facility licensure, since it is unknown how many providers will pursue this new licensure category.
6. Because of the potential for controversy, no outside involvement is expected in drafting standards (except as is provided in the rulemaking process as required in the Montana Administrative Procedure Act).
7. Estimated costs for survey operation due to an increase in providers under the new licensure category is unknown because it is uncertain how many facilities will pursue this new license.

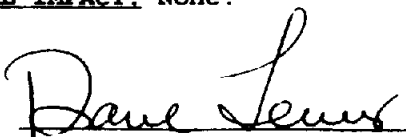
**Department of Social and Rehabilitation Services (SRS):**

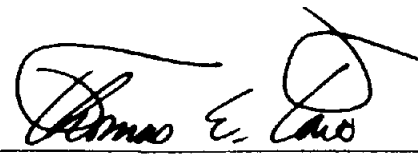
8. There is no fiscal impact to SRS as a result of this bill.
9. There will be no measurable impact on nursing home utilization and no measurable general fund savings. Personal care homes are available already, but they are not affordable. SB118 will help private pay people who can afford to meet their personal care needs.
10. SRS has applied to the Health Care Financing Administration (HCFA) for a federal Medicaid waiver to achieve the objective stated in the intent of the proposal, but has been advised that the waiver will not be approved.

**Department of Family Services (DFS):**

11. This bill would not generate any new revenue.
12. DFS would make an administrative rule change to exempt residents of category B personal care facilities from state supplemental payments. This would result in no additional payments from DFS for residents not currently covered.

**FISCAL IMPACT:** None.

 4-8-93  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 4/7/93  
THOMAS E. "TOM" TOWE, PRIMARY SPONSOR      DATE

Fiscal Note for SB0118, reference bill as amended

SB118-#3

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

SENATE BILL NO. 118

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LICENSING CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES; ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF NEED REQUIREMENTS; ~~ELIMINATING--ADULT--POSTER--FAMILY--CARE HOMES;~~ AMENDING SECTIONS 50-5-101, 50-5-226, 50-5-227, AND 50-5-301, ~~50-8-101, 52-3-811, AND 76-2-411,~~ MCA; ~~REPEALING SECTIONS--52-3-301,--52-3-302,--52-3-303,--52-3-304,--52-3-305, 52-3-311,--52-3-312,--52-3-313,--AND--52-3-314,---MCA;~~ AND PROVIDING AN EFFECTIVE ~~DATES~~ DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because 50-5-226 requires the department of health and environmental sciences to adopt standards governing personal-care facilities and because 50-5-227 requires the department to adopt rules implementing two categories of personal-care facilities.

The legislature intends that the standards to be adopted under 50-5-226 involve only those basic aspects of care that are not already part of local ordinances and that the rules do not overregulate or require more than absolutely

necessary for the safety of the residents because, in many instances, the facilities in which residents will live are the homes of those persons managing them.

The legislature recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The legislature further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The legislature further recognizes that the quality of care given in these homes or residences may be preferable under many circumstances because the patient-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Finally, the legislature recognizes that these homes can be considerably less expensive than nursing homes. Therefore, the legislature specifically finds that the use of private homes or residences in which the home setting is preserved is to be recognized as the preferred treatment for all persons who can receive adequate care in such a facility.

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

1       **Section 1.** Section 50-5-101, MCA, is amended to read:

2       **"50-5-101. Definitions.** As used in parts 1 through 4 of  
3 this chapter, unless the context clearly indicates  
4 otherwise, the following definitions apply:

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

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

10       (3) "Affected person" means an applicant for  
11 certificate of need, a member of the public who will be  
12 served by the proposal, a health care facility located in  
13 the geographic area affected by the application, an agency  
14 which that establishes rates for health care facilities, a  
15 third-party payer who reimburses health care facilities in  
16 the area affected by the proposal, or an agency which that  
17 plans or assists in planning for such health care  
18 facilities.

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

24       (5) "Batch" means those letters of intent to seek  
25 approval for new beds or major medical equipment that are

1 accumulated during a single batching period.

2       (6) "Batching period" means a period, not exceeding 1  
3 month, established by department rule during which letters  
4 of intent to seek approval for new beds or major medical  
5 equipment are accumulated pending further processing of all  
6 letters of intent within the batch.

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

9       (8) "Capital expenditure" means:

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

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

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

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

25       (11) "Chemical dependency facility" means a facility

whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

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

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

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

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

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

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

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

(19) "Health care facility" or "facility" means any all or a portion of an institution, building, or agency or portion--thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person-or-persons individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental

1 health centers, outpatient facilities, public health  
2 centers, rehabilitation facilities, residential treatment  
3 facilities, and adult day-care centers.

4 (20) "Health maintenance organization" means a public or  
5 private organization ~~which~~ that provides or arranges for  
6 health care services to enrollees on a prepaid or other  
7 financial basis, either directly through provider employees  
8 or through contractual or other arrangements with a provider  
9 or group of providers.

10 (21) "Home health agency" means a public agency or  
11 private organization or subdivision thereof ~~which~~ of the  
12 agency or organization that is engaged in providing home  
13 health services to individuals in the places where they  
14 live. Home health services must include the services of a  
15 licensed registered nurse and at least one other therapeutic  
16 service and may include additional support 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~~ the patient's family arising  
21 out of physical, psychological, spiritual, social, and  
22 economic stresses experienced during the final stages of  
23 illness and dying and that includes formal bereavement  
24 programs as an 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~~ individuals. Services provided may  
4 or may not include obstetrical care, emergency care, or any  
5 other service as allowed by state licensing authority. A  
6 hospital has an organized medical staff ~~which~~ that is on  
7 call and available within 20 minutes, 24 hours per day, 7  
8 days per 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) "Infirmary" 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 "infirmary--A" provides outpatient and inpatient  
17 care;

18 (b) an "infirmary--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 a health care facility that it finds meets its  
24 standards and requirements.

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

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

(27) (a) "Long-term care facility" means a facility or part thereof--which of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons individuals or that provides personal care to--more than--four--persons--who--are--not--related--to--the--owner--or administrator--by--blood--or--marriage. The term does not include adult--foster--care--licensed-under-52-3-303, ADULT FOSTER CARE LICENSED UNDER 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons individuals not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

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

(c) "Intermediate nursing care" means the provision of

nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

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

(e) "Personal care" means the provision of services and care which do not require nursing skills--to, which comply with 50-5-226 through 50-5-230 and rules of the department, for residents needing some assistance in performing the activities of daily living.

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

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons individuals prior to their transportation to a hospital or provides inpatient medical care to persons individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six



1 residents per square mile or is located more than 35 road  
2 miles from the nearest hospital.

3 (30) "Mental health center" means a facility providing  
4 services for the prevention or diagnosis of mental illness,  
5 the care and treatment of mentally ill patients or the  
6 rehabilitation of such persons mentally ill individuals, or  
7 any combination of these services.

8 (31) "Nonprofit health care facility" means a health  
9 care facility owned or operated by one or more nonprofit  
10 corporations or associations.

11 (32) "Observation bed" means a bed occupied for not more  
12 than 6 hours by a patient recovering from surgery or other  
13 treatment.

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

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

22 (35) "Patient" means an individual obtaining services,  
23 including skilled nursing care, from a health care facility.

24 (36) "Person" means any individual, firm, partnership,  
25 association, organization, agency, institution, corporation,

1 trust, estate, or governmental unit, whether organized for  
2 profit or not.

3 (37) "Public health center" means a publicly owned  
4 facility providing health services, including laboratories,  
5 clinics, and administrative offices.

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

14 (39) "Resident" means a person an individual who is in a  
15 long-term care facility for intermediate or personal care.

16 (40) "Residential psychiatric care" means active  
17 psychiatric treatment provided in a residential treatment  
18 facility to psychiatrically impaired individuals with  
19 persistent patterns of emotional, psychological, or  
20 behavioral dysfunction of such severity as to require  
21 24-hour supervised care to adequately treat or remedy the  
22 individual's condition. Residential psychiatric care must be  
23 individualized and designed to achieve the patient's  
24 discharge to less restrictive levels of care at the earliest  
25 possible time.

1 (41) "Residential treatment facility" means a facility  
2 operated for the primary purpose of providing residential  
3 psychiatric care to persons individuals under 21 years of  
4 age.

5 (42) "State health plan" means the plan prepared by the  
6 department to project the need for health care facilities  
7 within Montana and approved by the statewide health  
8 coordinating council and the governor."

9 **Section 2.** Section 50-5-226, MCA, is amended to read:

10 **"50-5-226. Placement in personal-care facilities. (1) A**  
11 **personal-care facility may not-have-as-a-resident-a-person**  
12 **who-is-**

13 ~~(a)--in-need-of-medical-or-physical-restraints;~~

14 ~~(b)--nonambulatory-or-bedridden;~~

15 ~~(c)--totally-incontinent;-or~~

16 ~~(d)--less-than-18-years--of--age~~ provide personal-care  
17 services to a resident who is 18 years of age or older and  
18 in need of the personal care for which the facility is  
19 licensed under 50-5-227.

20 (2) A resident of a personal-care facility licensed as  
21 a category A facility under 50-5-227 may obtain third-party  
22 provider services for skilled nursing care for no more than  
23 20 consecutive days at a time.

24 (3) A resident of a personal-care facility licensed as  
25 a category B facility under 50-5-227 must have a signed

1 statement from a physician agreeing to the resident's  
2 admission to the facility if the resident is:

3 (a) in need of skilled nursing care;

4 (b) in need of medical, physical, or chemical  
5 restraint;

6 (c) nonambulatory or bedridden;

7 (d) incontinent to the extent that bowel or bladder  
8 control is absent; or

9 (e) unable to self-administer medications.

10 (4) A RESIDENT OF A PERSONAL CARE FACILITY MUST HAVE A  
11 SIGNED STATEMENT, RENEWED ON AN ANNUAL BASIS, FROM A  
12 PHYSICIAN, A PHYSICIAN-ASSISTANT CERTIFIED, A NURSE  
13 PRACTITIONER, OR A REGISTERED NURSE, WHOSE WORK IS UNRELATED  
14 TO THE OPERATION OF THE FACILITY AND WHO:

15 (A) ACTUALLY VISITED THE FACILITY WITHIN THE YEAR  
16 COVERED BY THE STATEMENT;

17 (B) HAS CERTIFIED THAT THE PARTICULAR NEEDS OF THE  
18 RESIDENT CAN BE ADEQUATELY MET IN THE FACILITY; AND

19 (C) HAS CERTIFIED THAT THERE HAS BEEN NO SIGNIFICANT  
20 CHANGE IN HEALTH CARE STATUS THAT WOULD REQUIRE ANOTHER  
21 LEVEL OF CARE.

22 ~~(2)(4)(5)~~ The department shall, in consultation with  
23 the department of social and rehabilitation services,  
24 provide by rule:

25 (a) an application or placement procedure informing a

1 prospective resident and, if applicable, ~~his~~ the resident's  
2 physician of:

3 (i) physical and mental standards for residents of  
4 personal-care facilities;

5 (ii) requirements for placement in a facility with a  
6 higher standard of care if a resident's condition  
7 deteriorates; and

8 (iii) the services offered by the facility and services  
9 that a resident may receive from third-party providers while  
10 resident in the facility;

11 (b) standards to be used by a facility and, if  
12 appropriate, by a screening agency to screen residents and  
13 prospective residents to prevent residence by persons  
14 prohibited-by individuals referred to in subsection(1)(3);

15 (c) a method by which the results of any screening  
16 decision made pursuant to rules established under subsection  
17 ~~(2)(b)~~ ~~(4)(b)~~ (5)(B) may be appealed by the facility  
18 operator or by or on behalf of a resident or prospective  
19 resident; and

20 (d) standards for operating a personal-care facility,  
21 including standards for the physical, structural,  
22 environmental, sanitary, infection control, dietary, social,  
23 staffing, and recordkeeping components of a facility."

24 **Section 3.** Section 50-5-227, MCA, is amended to read:

25 "50-5-227. Licensing personal-care facilities. (1) The

1 department shall, in consultation with the department of  
2 social and rehabilitation services, by rule adopt standards  
3 for licensing and operation of personal-care facilities to  
4 implement the provisions of 50-5-225 and 50-5-226.

5 (2) The following licensing categories must be used by  
6 the department in adopting rules under subsection (1):

7 (a) category A--a facility providing personal care to  
8 six or more residents who may not be:

9 (i) in need of skilled nursing care;

10 (ii) in need of medical, chemical, or physical  
11 restraint;

12 (iii) nonambulatory or bedridden;

13 (iv) incontinent to the extent that bowel or bladder  
14 control is absent; or

15 (v) unable to self-administer medications; or

16 (b) category B--a facility providing personal care to  
17 five or fewer residents who may be:

18 (i) in need of skilled nursing care;

19 (ii) in need of medical, chemical, or physical  
20 restraint;

21 (iii) nonambulatory or bedridden;

22 (iv) incontinent to the extent that bowel or bladder  
23 control is absent; or

24 (v) unable to self-administer medications.

25 (2)(3) The department may by rule establish license

fees, inspection fees, and fees for patient screening. Such fees Fees must be reasonably related to service costs."

**Section 4.** Section 50-5-301, MCA, is amended to read:

"50-5-301. 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 the person 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;

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

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

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

(i) the person submits the letter of intent required 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 that is being  
6 replaced or which that did not previously exist, by any  
7 person, including another type of health care facility;

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

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, or 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 long-term care facility, medical assistance facility, mental  
5 health center with inpatient services, inpatient chemical  
6 dependency facility, rehabilitation facility with inpatient  
7 services, or residential treatment facility--or--personal  
8 care-facility. The term does not include:

9 (i) a hospital, except to the extent that a hospital is  
10 subject to certificate of need requirements pursuant to  
11 subsection (1)(i); or

12 (ii) an office of a private physician, dentist, or other  
13 physical or mental health care professionals, including  
14 chemical dependency counselors.

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

20 (ii) The term does not include adult--foster---care  
21 personal-care--facilities ADULT FOSTER CARE, licensed under  
22 52-3-303 50-5-227 52-3-303; community homes for the  
23 developmentally disabled, licensed under 53-20-305;  
24 community homes for persons with severe disabilities,  
25 licensed under 52-4-203; boarding or foster homes for

children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

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

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

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

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

(b) For construction of health care facilities, the

expenditure threshold is \$1,500,000."

**Section 5.**--Section 50-8-101, MCA, is amended to read:--

"50-8-101.--Definitions.--As--used--in--this--part,--the following definitions apply:

{1}--"Department"--means--the--department--of--corrections and--human--services,--the--department--of--health--and environmental--sciences,--and--the--department--of--family services:

{2}--"Facility"--means:

{a}--for--the--department--of--corrections--and--human services,--nonmedical--facilities--including:

{i}--mental-health-transitional-living-facilities,--and

{ii}--inpatient-freestanding-or-intermediate-transitional living--facilities--for--alcohol/drug-treatment-or-emergency detoxification;

{b}--for--the--department--of--family--services:

{i}--community-homes-for-the-developmentally-disabled, and community-homes-for-physically-disabled-persons,--and adult-foster-care-homes,--and

{ii}--youth-care-facilities,--and

{c}--for--the--department--of--health--and--environmental sciences:

{i}--public-accommodations,--including-roominghouses-and retirement-homes,--hotels,--and-motels;

{ii}--health-care-facilities--or--services,--including

1 hospitals;--skilled--and--intermediate--nursing--home--services;  
2 and--intermediate--care--nursing--home--services--for--the--mentally  
3 retarded;

4 (iii)--freestanding--medical--facilities--or--care;--including  
5 infirmaries;--kidney--treatment--centers;--and--home--health  
6 agencies;--and

7 (iv)--personal--care--facilities;

8 (3)--"inspecting--authority"--means--the--department--or  
9 agency--authorized--by--statute--to--perform--a--given--inspection  
10 necessary--for--certification--for--licensure;

11 (4)--"licensing--agency"--means--the--agency--that--is  
12 authorized--by--statute--to--issue--the--license;"

13 **Section 6.--Section 52-3-811, MCA, is amended to read:--**

14 **"52-3-811.--Reports.--(1)--When--the--professionals--and**  
15 **other--persons--listed--in--subsection--(3)--know--or--have**  
16 **reasonable--cause--to--suspect--that--an--older--person--or--a**  
17 **developmentally--disabled--person--known--to--them--in--their**  
18 **professional--or--official--capacities--has--been--subjected--to**  
19 **abuse;--exploitation;--or--neglect;--they--shall:**

20 (a)--if--the--person--is--not--a--resident--of--a--long--term--care  
21 facility;--report--the--matter--to:

22 (i)--the--department--of--family--services--or--its--local  
23 affiliate;

24 (ii)--the--county--attorney--of--the--county--in--which--the  
25 person--resides--or--in--which--the--acts--that--are--the--subject--of

1 the--report--occurred;

2 (b)--if--the--person--is--a--resident--of--a--long--term--care  
3 facility;--report--the--matter--to--the--long--term--care--ombudsman  
4 appointed--under--the--provisions--of--42-U.S.C.-3027(a)(12)--and  
5 to--the--department--of--health--and--environmental--sciences.--The  
6 department--shall--investigate--the--matter--pursuant--to--its  
7 authority--in--50-5-204--and;--if--it--finds--any--allegations--of  
8 abuse;--exploitation;--or--neglect--contained--in--the--report--to  
9 be--substantially--true;--forward--a--copy--of--the--report--to--the  
10 department--of--family--services--and--to--the--county--attorney--as  
11 provided--in--subsection--(1)(a)(ii);

12 (2)--If--the--report--required--in--subsection--(1)--involves  
13 an--act--or--omission--of--the--department--of--family--services  
14 which that may--be--construed--as--abuse;--exploitation;--or  
15 neglect;--a--copy--of--the--report--may--not--be--sent--to--the  
16 department--but--must--be--sent--instead--to--the--county--attorney  
17 of--the--county--in--which--the--older--person--or--the  
18 developmentally--disabled--person--resides--or--in--which--the--acts  
19 that--are--the--subject--of--the--report--occurred;

20 (3)--Professionals--and--other--persons--required--to--report  
21 are:

22 (a)--a--physician;--resident;--intern;--professional--or  
23 practical--nurse;--physician's--assistant;--or--member--of--a  
24 hospital--staff--engaged--in--the--admission;--examination;--care;  
25 or--treatment--of--persons;

{b}--an--osteopath,--dentist,--denturist,--chiropractor,  
optometrist,--podiatrist,--medical-examiner,--coroner,--or--any  
other-health-or-mental-health-professional;

{c}--an-ambulance-attendant;

{d}--a-social-worker-or-other-employee-of-the--state,--a  
county,--or--a--municipality--assisting-an-older-person-or-a  
developmentally-disabled-person-in-the--application--for--or  
receipt-of-public-assistance-payments-or-services;

{e}--a--person--who--maintains--or--is--employed--by--a  
roominghouse,--retirement-home,--nursing-home,--group-home,--or  
adult-foster-care-home personal-care-facility;

{f}--an--attorney,--unless--he the--attorney acquired  
knowledge-of-the-facts-required-to-be-reported-from-a-client  
and-the-attorney-client-privilege-applies; and

{g}--a-peace-officer-or-other-law-enforcement-official;

{4}--Any-other-person-may-submit-a-report-as-provided-in  
subsection-(1);."

**Section 7.**--Section 76-2-411, MCA, is amended to read:--

"76-2-411. Definition--of--community--residential  
facility:--"Community-residential-facility"--means:

{1}--a--community--group--home--for--developmentally,  
mentally,--or--severely-disabled-persons-which that does-not  
provide-skilled-or-intermediate-nursing-care;

{2}--a-youth-foster-home-or-youth-group-home-as--defined  
in-41-3-1102;

{3}--a--halfway--house--operated--in--accordance--with  
regulations-of-the-department-of--health--and--environmental  
sciences corrections--and--human--services for--the  
rehabilitation-of-alcoholics-or-drug-dependent-persons;--or

{4}--a--licensed--adult--foster--family--care--home  
personal-care-facility."

**NEW SECTION.** **Section 8.** Repealer. Sections 52-3-301,--  
52-3-302,--52-3-303,--52-3-304,--52-3-305,--52-3-311,--52-3-312,  
52-3-313, and 52-3-314, MCA, are repealed.

**NEW SECTION.** **Section 5.** Applicability. [This act] and  
the rules of the department of health and environmental  
sciences adopted pursuant to [sections 2 and 3] apply to  
licenses for personal care facilities issued or renewed  
after July 1, 1994.

**NEW SECTION.** **Section 6.** Effective DATE. (1)  
{Sections--2,--3,--9,--and--this--section}--are-effective-on  
passage-and-approval.

{2}--{Sections--1-and-4-through--8}--are [THIS ACT] IS  
effective July 1, 1994.

-End-



## SENATE BILL NO. 118

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LICENSING CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES; ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF NEED REQUIREMENTS; ~~ELIMINATING--ADULT--FOSTER--FAMILY--CARE HOMES,~~ AMENDING SECTIONS 50-5-101, 50-5-226, 50-5-227, AND 50-5-301, ~~50-8-101, 52-3-011, AND 76-2-411,~~ MCA; ~~REPEALING SECTIONS--52-3-301,--52-3-302,--52-3-303,--52-3-304,--52-3-305, 52-3-311,--52-3-312,--52-3-313,--AND--52-3-314,--ME,~~ AND PROVIDING AN EFFECTIVE DATES DATE AND AN APPLICABILITY DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because 50-5-226 requires the department of health and environmental sciences to adopt standards governing personal-care facilities and because 50-5-227 requires the department to adopt rules implementing two categories of personal-care facilities.

The legislature intends that the standards to be adopted under 50-5-226 involve only those basic aspects of care that are not already part of local ordinances and that the rules do not overregulate or require more than absolutely

necessary for the safety of the residents because, in many instances, the facilities in which residents will live are the homes of those persons managing them.

The legislature recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The legislature further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The legislature further recognizes that the quality of care given in these homes or residences may be preferable under many circumstances because the patient-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Finally, the legislature recognizes that these homes can be considerably less expensive than nursing homes. Therefore, the legislature specifically finds that the use of private homes or residences in which the home setting is preserved is to be recognized as the preferred treatment for all persons who can receive adequate care in such a facility.

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

1       **Section 1.** Section 50-5-101, MCA, is amended to read:

2       "50-5-101. Definitions. As used in parts 1 through 4 of  
3 this chapter, unless the context clearly indicates  
4 otherwise, the following definitions apply:

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

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

10       (3) "Affected person" means an applicant for  
11 certificate of need, a member of the public who will be  
12 served by the proposal, a health care facility located in  
13 the geographic area affected by the application, an agency  
14 which that establishes rates for health care facilities, a  
15 third-party payer who reimburses health care facilities in  
16 the area affected by the proposal, or an agency which that  
17 plans or assists in planning for such health care  
18 facilities.

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

24       (5) "Batch" means those letters of intent to seek  
25 approval for new beds or major medical equipment that are

1 accumulated during a single batching period.

2       (6) "Batching period" means a period, not exceeding 1  
3 month, established by department rule during which letters  
4 of intent to seek approval for new beds or major medical  
5 equipment are accumulated pending further processing of all  
6 letters of intent within the batch.

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

9       (8) "Capital expenditure" means:

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

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

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

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

25       (11) "Chemical dependency facility" means a facility

whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

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

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

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

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

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

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

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

(19) "Health care facility" or "facility" means any all or a portion of an institution, building, or agency or portion--thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person-or-persons individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental

1 health centers, outpatient facilities, public health  
2 centers, rehabilitation facilities, residential treatment  
3 facilities, and adult day-care centers.

4 (20) "Health maintenance organization" means a public or  
5 private organization which that provides or arranges for  
6 health care services to enrollees on a prepaid or other  
7 financial basis, either directly through provider employees  
8 or through contractual or other arrangements with a provider  
9 or group of providers.

10 (21) "Home health agency" means a public agency or  
11 private organization or subdivision thereof-which of the  
12 agency or organization that is engaged in providing home  
13 health services to individuals in the places where they  
14 live. Home health services must include the services of a  
15 licensed registered nurse and at least one other therapeutic  
16 service and may include additional support 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 the patient's family arising  
21 out of physical, psychological, spiritual, social, and  
22 economic stresses experienced during the final stages of  
23 illness and dying and that includes formal bereavement  
24 programs as an 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 individuals. Services provided may  
4 or may not include obstetrical care, emergency care, or any  
5 other service as allowed by state licensing authority. A  
6 hospital has an organized medical staff which that is on  
7 call and available within 20 minutes, 24 hours per day, 7  
8 days per 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 inpatient  
17 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 a health care facility that it finds meets its  
24 standards and requirements.

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

1 that 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 of a facility that provides skilled  
5 nursing care, intermediate nursing care, or intermediate  
6 developmental disability care to a total of two or more  
7 persons individuals or that provides personal care to--more  
8 than--four--persons--who--are--not--related--to-the-owner-or  
9 administrator-by--blood--or--marriage. The term does not  
10 include ~~adult--foster--care--licensed-under-52-3-303~~, ADULT  
11 FOSTER CARE LICENSED UNDER 52-3-303, community homes for the  
12 developmentally disabled licensed under 53-20-305, community  
13 homes for persons individuals with severe disabilities  
14 licensed under 52-4-203, youth care facilities licensed  
15 under 41-3-1142, hotels, motels, boardinghouses,  
16 roominghouses, or similar accommodations providing for  
17 transients, students, or persons individuals not requiring  
18 institutional health care, or juvenile and adult  
19 correctional facilities operating under the authority of the  
20 department of corrections and human services.

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

25 (c) "Intermediate nursing care" means the provision of

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

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

9 (e) "Personal care" means the provision of services and  
10 care ~~which-do-not-require-nursing-skills--to,~~ which comply  
11 with 50-5-226 through 50-5-230 and rules of the department,  
12 for residents needing some assistance in performing the  
13 activities of 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) "Medical assistance facility" means a facility  
19 that:

20 (a) provides inpatient care to ill or injured persons  
21 individuals prior to their transportation to a hospital or  
22 provides inpatient medical care to persons individuals  
23 needing that care for a period of no longer than 96 hours;  
24 and

25 (b) either is located in a county with fewer than six

1 residents per square mile or is located more than 35 road  
2 miles from the nearest hospital.

3 (30) "Mental health center" means a facility providing  
4 services for the prevention or diagnosis of mental illness,  
5 the care and treatment of mentally ill patients or the  
6 rehabilitation of such persons mentally ill individuals, or  
7 any combination of these services.

8 (31) "Nonprofit health care facility" means a health  
9 care facility owned or operated by one or more nonprofit  
10 corporations or associations.

11 (32) "Observation bed" means a bed occupied for not more  
12 than 6 hours by a patient recovering from surgery or other  
13 treatment.

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

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

22 (35) "Patient" means an individual obtaining services,  
23 including skilled nursing care, from a health care facility.

24 (36) "Person" means any individual, firm, partnership,  
25 association, organization, agency, institution, corporation,

1 trust, estate, or governmental unit, whether organized for  
2 profit or not.

3 (37) "Public health center" means a publicly owned  
4 facility providing health services, including laboratories,  
5 clinics, and administrative offices.

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

14 (39) "Resident" means ~~a person~~ an individual who is in a  
15 long-term care facility for intermediate or personal care.

16 (40) "Residential psychiatric care" means active  
17 psychiatric treatment provided in a residential treatment  
18 facility to psychiatrically impaired individuals with  
19 persistent patterns of emotional, psychological, or  
20 behavioral dysfunction of such severity as to require  
21 24-hour supervised care to adequately treat or remedy the  
22 individual's condition. Residential psychiatric care must be  
23 individualized and designed to achieve the patient's  
24 discharge to less restrictive levels of care at the earliest  
25 possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to persons individuals under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

**Section 2.** Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in personal-care facilities. (1) A personal-care facility may ~~not have as a resident a person who is:~~

~~(a) in need of medical or physical restraints;~~

~~(b) nonambulatory or bedridden;~~

~~(c) totally incontinent; or~~

~~(d) less than 18 years of age~~ provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed

statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(4) A RESIDENT OF A PERSONAL CARE FACILITY MUST HAVE A SIGNED STATEMENT, RENEWED ON AN ANNUAL BASIS, FROM A PHYSICIAN, A PHYSICIAN-ASSISTANT CERTIFIED, A NURSE PRACTITIONER, OR A REGISTERED NURSE, WHOSE WORK IS UNRELATED TO THE OPERATION OF THE FACILITY AND WHO:

(A) ACTUALLY VISITED THE FACILITY WITHIN THE YEAR COVERED BY THE STATEMENT;

(B) HAS CERTIFIED THAT THE PARTICULAR NEEDS OF THE RESIDENT CAN BE ADEQUATELY MET IN THE FACILITY; AND

(C) HAS CERTIFIED THAT THERE HAS BEEN NO SIGNIFICANT CHANGE IN HEALTH CARE STATUS THAT WOULD REQUIRE ANOTHER LEVEL OF CARE.

~~(2)(4)(5)~~ The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a

prospective resident and, if applicable, his the resident's physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited-by individuals referred to in subsection (3);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(2)(b)~~ ~~(4)(b)~~ (5)(B) may be appealed by the facility operator or by or on behalf of a resident or prospective resident; and

(d) standards for operating a personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility."

**Section 3.** Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing personal-care facilities. (1) The

department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A--a facility providing personal care to six or more residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B--a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

~~(2)(3)~~ The department may by rule establish license



fees, inspection fees, and fees for patient screening. Such fees Fees must be reasonably related to service costs."

**Section 4.** Section 50-5-301, MCA, is amended to read:

"50-5-301. 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 the person 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;

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

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

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

(i) the person submits the letter of intent required 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 that is being  
6 replaced or which that did not previously exist, by any  
7 person, including another type of health care facility;

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

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, or 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 long-term care facility, medical assistance facility, mental  
5 health center with inpatient services, inpatient chemical  
6 dependency facility, rehabilitation facility with inpatient  
7 services, or residential treatment facility, ~~or-personal~~  
8 care-facility. The term does not include:

9 (i) a hospital, except to the extent that a hospital is  
10 subject to certificate of need requirements pursuant to  
11 subsection (1)(i); or

12 (ii) an office of a private physician, dentist, or other  
13 physical or mental health care professionals, including  
14 chemical dependency counselors.

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

20 (ii) The term does not include ~~adult--foster---care~~  
21 ~~personal-care--facilities~~ ADULT FOSTER CARE, licensed under  
22 ~~52-3-303~~ 50-5-227 52-3-303; community homes for the  
23 developmentally disabled, licensed under 53-20-305;  
24 community homes for persons with severe disabilities,  
25 licensed under 52-4-203; boarding or foster homes for

1 children, licensed under 41-3-1142; hotels, motels,  
2 boardinghouses, roominghouses, or similar accommodations  
3 providing for transients, students, or persons individuals  
4 not requiring institutional health care; or juvenile and  
5 adult correctional facilities operating under the authority  
6 of the department of corrections and human services.

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

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

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

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

25 (b) For construction of health care facilities, the

1 expenditure threshold is \$1,500,000."

2 ~~Section 5. Section 50-8-101, MCA, is amended to read:--~~

3 ~~"50-8-101. Definitions. As used in this part, the~~  
4 ~~following definitions apply:~~

5 ~~(1) "Department" means the department of corrections~~  
6 ~~and human services, the department of health and~~  
7 ~~environmental sciences, and the department of family~~  
8 ~~services.~~

9 ~~(2) "Facility" means:~~

10 ~~(a) for the department of corrections and human~~  
11 ~~services, nonmedical facilities including:~~

12 ~~(i) mental health transitional living facilities, and~~  
13 ~~(ii) inpatient freestanding or intermediate transitional~~  
14 ~~living facilities for alcohol/drug treatment or emergency~~  
15 ~~detoxification;~~

16 ~~(b) for the department of family services:~~

17 ~~(i) community homes for the developmentally disabled,~~  
18 ~~and community homes for physically disabled persons, and~~  
19 ~~adult foster care homes; and~~

20 ~~(ii) youth care facilities; and~~

21 ~~(c) for the department of health and environmental~~  
22 ~~sciences:~~

23 ~~(i) public accommodations, including roominghouses and~~  
24 ~~retirement homes, hotels, and motels;~~

25 ~~(ii) health care facilities or services, including~~

1 hospitals,--skilled--and--intermediate--nursing--home--services,  
2 and--intermediate--care--nursing--home--services--for--the--mentally  
3 retarded;

4 (iii)--freestanding--medical--facilities--or--care,--including  
5 infirmaries,--kidney--treatment--centers,--and--home--health  
6 agencies,--and

7 (iv)--personal--care--facilities;

8 (3)--"inspecting--authority"--means--the--department--or  
9 agency--authorized--by--statute--to--perform--a--given--inspection  
10 necessary--for--certification--for--licensure;

11 (4)--"licensing--agency"--means--the--agency--that--is  
12 authorized--by--statute--to--issue--the--license;"

13 **Section 6.**--Section 52-3-811, MCA, is amended to read:--

14 "52-3-811--Reports,--(1)--When--the--professionals--and  
15 other--persons--listed--in--subsection--(3)--know--or--have  
16 reasonable--cause--to--suspect--that--an--older--person--or--a  
17 developmentally--disabled--person--known--to--them--in--their  
18 professional--or--official--capacities--has--been--subjected--to  
19 abuse,--exploitation,--or--neglect,--they--shall:

20 (a)--if--the--person--is--not--a--resident--of--a--long--term--care  
21 facility,--report--the--matter--to:

22 (i)--the--department--of--family--services--or--its--local  
23 affiliate;

24 (ii)--the--county--attorney--of--the--county--in--which--the  
25 person--resides--or--in--which--the--acts--that--are--the--subject--of

1 the--report--occurred;

2 (b)--if--the--person--is--a--resident--of--a--long--term--care  
3 facility,--report--the--matter--to--the--long--term--care--ombudsman  
4 appointed--under--the--provisions--of--42-U.S.C.-3027(a)(12)--and  
5 to--the--department--of--health--and--environmental--sciences. The  
6 department--shall--investigate--the--matter--pursuant--to--its  
7 authority--in--50-5-204--and,--if--it--finds--any--allegations--of  
8 abuse,--exploitation,--or--neglect--contained--in--the--report--to  
9 be--substantially--true,--forward--a--copy--of--the--report--to--the  
10 department--of--family--services--and--to--the--county--attorney--as  
11 provided--in--subsection--(1)(a)(ii);

12 (2)--If--the--report--required--in--subsection--(1)--involves  
13 an--act--or--omission--of--the--department--of--family--services  
14 which that may--be--construed--as--abuse,--exploitation,--or  
15 neglect,--a--copy--of--the--report--may--not--be--sent--to--the  
16 department--but--must--be--sent--instead--to--the--county--attorney  
17 of--the--county--in--which--the--older--person--or--the  
18 developmentally--disabled--person--resides--or--in--which--the--acts  
19 that--are--the--subject--of--the--report--occurred;

20 (3)--Professionals--and--other--persons--required--to--report  
21 are:

22 (a)--a--physician,--resident,--intern,--professional--or  
23 practical--nurse,--physician's--assistant,--or--member--of--a  
24 hospital--staff--engaged--in--the--admission,--examination,--care,  
25 or--treatment--of--persons;

{b}--an--osteopath,--dentist,--denturist,--chiropractor,  
optometrist,--podiatrist,--medical-examiner,--coroner,--or--any  
other-health-or-mental-health-professional;

{c}--an-ambulance-attendant;

{d}--a-social-worker-or-other-employee-of-the--state--a  
county,--or--a--municipality--assisting-an-older-person-or-a  
developmentally-disabled-person-in-the--application--for--or  
receipt-of-public-assistance-payments-or-services;

{e}--a---person--who--maintains--or--is--employed--by--a  
roominghouse,--retirement-home,--nursing-home,--group-home,--or  
adult-foster-care-home personal-care-facility;

{f}--an---attorney,--unless--he the--attorney acquired  
knowledge-of-the-facts-required-to-be-reported-from-a-client  
and-the-attorney-client-privilege-applies,--and

{g}--a-peace-officer-or-other-law-enforcement-official;

{4}--Any-other-person-may-submit-a-report-as-provided-in  
subsection-{1};"

**Section 7.**--Section-76-2-411,--MCA,--is-amended-to-read:--

"76-2-411.---Definition---of---community---residential  
facility.---"Community-residential-facility"---means:

{1}--a--community--group---home---for---developmentally,  
mentally,--or--severely-disabled-persons-which that does-not  
provide-skilled-or-intermediate-nursing-care;

{2}--a-youth-foster-home-or-youth-group-home-as--defined  
in-41-3-1102;

{3}--a---halfway---house--operated--in--accordance--with  
regulations-of-the-department-of--health--and--environmental  
sciences corrections---and---human---services for---the  
rehabilitation-of-alcoholics-or-drug-dependent-persons,--or  
{4}--a--licensed---adult---foster---family---care---home  
personal-care-facility."

**NEW SECTION. Section 8.**--Repealer,--Sections--52-3-301,--  
52-3-302,--52-3-303,--52-3-304,--52-3-305,--52-3-311,--52-3-312,  
52-3-313,--and--52-3-314,--MCA,--are-repealed.

**NEW SECTION. Section 5.** Applicability. [This act] and  
the rules of the department of health and environmental  
sciences adopted pursuant to [sections 2 and 3] apply to  
licenses for personal care facilities issued or renewed  
after July 1, 1994.

**NEW SECTION. Section 6.** Effective dates DATE. "(1)  
{Sections--2,--3,--9,--and--this--section}--are-effective-on  
passage-and-approval;

{2}--{Sections-1-and-4-through-8}--are [THIS ACT] IS  
effective July 1, 1994.

-End-

HOUSE STANDING COMMITTEE REPORT

March 13, 1993

Page 1 of 2

March 13, 1993

Page 2 of 2

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 118 (third reading copy -- blue) be concurred in as amended.

Signed: \_\_\_\_\_

*Wm E Boharski*

Bill Boharski, Chair

And, that such amendments read:

Carried by: Rep. Hansen

1. Title, line 8.

Following: "~~HOMES,~~"

Insert: "PROHIBITING SUPPLEMENTARY PAYMENTS FOR RESIDENTS OF CERTAIN PERSONAL-CARE FACILITIES;"

Strike: "AND"

2. Title, line 9:

Following: "~~76-2-411,~~"

Insert: "AND 52-1-104,"

3. Page 15, line 19.

Strike: "and"

4. Page 15, line 20.

Following: "operating a"

Insert: "category A"

5. Page 15, line 23.

Following: "facility"

Insert: "; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs"

6. Page 26.

Following: line 9

Insert: "Section 5. Section 52-1-104, MCA, is amended to read:

"52-1-104. Department authorized to provide and set standards for supplementary payments. (1) The Except as provided in this section, the department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B personal-care facilities licensed pursuant to 50-5-227."

Renumber: subsequent sections

7. Page 26, line 10.

Strike: "[This Act]"

Insert: "[Sections 1 through 4]"

-END-

Committee Vote:

Yes 14, No 2.

571216SC.Hpf

HOUSE

*SB 118*

571216SC.Hpf

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 118  
Representative Smith

#1

March 29, 1993 9:08 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 118 (third reading copy -- blue).

Signed:   
Representative Smith

And, that such amendments to Senate Bill 118 read as follows:

1. Page 14, line 11.

Following: "BASIS"

Insert: "for a category A facility and on a quarterly basis for a category B facility"

2. Page 14, line 16.

Following: "STATEMENT"

Insert: "for a category A facility and within the calendar quarter covered by the statement for a category B facility"

-END-

ADOPT

REJECT

HOUSE

SB 118

#1  
HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 118  
Representative S.J. Hansen

April 13, 1993 7:25 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 118 (Reference Copy--  
Salmon).

Signed: Steven J. Hansen  
Representative S.J. Hansen

And, that such amendments to Senate Bill 118 read as follows:

1. Page 10, lines 12 and 13.

Following: "to"

Strike: ", which" on line 12 through "department," on line 13

2. Page 14, line 12.

Following: "FACILITY"

Insert: "who needs skilled nursing care"

-END-

ADOPT

REJECT

56118.1

810723CW.Hpf

#2  
HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 118  
Representative Boharski

April 13, 1993 5:09 pm  
Page 1 of 3

Mr. Chairman: I move to amend Senate Bill 118 reference bill  
(salmon).

Signed: Wm E Boharski  
Representative Boharski

And, that such amendments to Senate Bill 118 read as follows:

1. Title, line 9.

Following: "I"

Insert: "PROHIBITING MEDICAID PAYMENT TO PERSONAL CARE  
FACILITIES;"

2. Title, line 11.

Strike: "AND"

Following: "I"

Insert: "AND 53-6-101,"

3. Page 27.

Following: line 13

Insert: "Section 6. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program -- authorization of  
services. (1) There is a Montana medicaid program established for  
the purpose of providing necessary medical services to eligible  
persons who have need for medical assistance. The Montana  
medicaid program is a joint federal-state program administered  
under this chapter and in accordance with Title XIX of the  
federal Social Security Act (42 U.S.C. 1396, et seq.), as may be  
amended. The department of social and rehabilitation services  
shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid  
program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum  
mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment  
services for persons under 21 years of age;

ADOPT

REJECT

HOUSE  
S/B 118

811709CW.Hss



April 13, 1993  
Page 2 of 3

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(1)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill but limited to services provided in crisis intervention programs;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of

April 13, 1993  
Page 3 of 3

medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder.

(11) Medicaid payment for personal care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Renumber: subsequent sections

## 1 SENATE BILL NO. 118

2 INTRODUCED BY TOWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LICENSING  
5 CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES;  
6 ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF  
7 NEED REQUIREMENTS; ~~ELIMINATING--ADULT--FOSTER--FAMILY--CARE~~  
8 ~~HOMES;~~ PROHIBITING SUPPLEMENTARY PAYMENTS FOR RESIDENTS OF  
9 CERTAIN PERSONAL-CARE FACILITIES; AMENDING SECTIONS  
10 50-5-101, 50-5-226, 50-5-227, AND 50-5-301, ~~50-5-301,~~  
11 ~~52-3-811,--AND--76-2-411,~~ AND 52-1-104, MCA; REPEALING  
12 ~~SECTIONS--52-3-301,--52-3-302,--52-3-303,--52-3-304,--52-3-305,~~  
13 ~~52-3-311,--52-3-312,--52-3-313,--AND--52-3-314,---MCA,~~ AND  
14 PROVIDING AN EFFECTIVE DATES DATE AND AN APPLICABILITY  
15 DATE."

16  
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because  
19 50-5-226 requires the department of health and environmental  
20 sciences to adopt standards governing personal-care  
21 facilities and because 50-5-227 requires the department to  
22 adopt rules implementing two categories of personal-care  
23 facilities.

24 The legislature intends that the standards to be adopted  
25 under 50-5-226 involve only those basic aspects of care that

1 are not already part of local ordinances and that the rules  
2 do not overregulate or require more than absolutely  
3 necessary for the safety of the residents because, in many  
4 instances, the facilities in which residents will live are  
5 the homes of those persons managing them.

6 The legislature recognizes a preference by many senior  
7 citizens and their relatives for seniors to live in a home  
8 setting in a private home or residence rather than in a  
9 nursing home. The legislature further recognizes that there  
10 are a number of persons in this state who are willing to  
11 care for seniors in their own homes or in homes operated by  
12 them in which the home setting is preserved. The legislature  
13 further recognizes that the quality of care given in these  
14 homes or residences may be preferable under many  
15 circumstances because the patient-to-staff ratio is  
16 considerably lower than in a nursing home and the home  
17 setting avoids the institutional atmosphere and associated  
18 problems.

19 Finally, the legislature recognizes that these homes can  
20 be considerably less expensive than nursing homes.  
21 Therefore, the legislature specifically finds that the use  
22 of private homes or residences in which the home setting is  
23 preserved is to be recognized as the preferred treatment for  
24 all persons who can receive adequate care in such a  
25 facility.

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

**Section 1.** Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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

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

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which that establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which that plans or assists in planning for such health care facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which that 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 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 to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

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

(8) "Capital expenditure" means:

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

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

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

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

1 preceding batching period.

2 (11) "Chemical dependency facility" means a facility  
3 whose function is the treatment, rehabilitation, and  
4 prevention of the use of any chemical substance, including  
5 alcohol, which that creates behavioral or health problems  
6 and endangers the health, interpersonal relationships, or  
7 economic function of an individual or the public health,  
8 welfare, or safety.

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

16 (13) "College of American pathologists" means the  
17 organization nationally recognized by that name with  
18 headquarters in Traverse City, Michigan, that surveys  
19 clinical laboratories upon their requests and accredits  
20 clinical laboratories that it finds meet its standards and  
21 requirements.

22 (14) "Comparative review" means a joint review of two or  
23 more certificate of need applications which that are  
24 determined by the department to be competitive in that the  
25 granting of a certificate of need to one of the applicants

1 would substantially prejudice the department's review of the  
2 other applications.

3 (15) "Construction" means the physical erection of a  
4 health care facility and any stage thereof of the physical  
5 erection, including ground breaking, or remodeling,  
6 replacement, or renovation of an existing health care  
7 facility.

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

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

13 (18) "Governmental unit" means the state, a state  
14 agency, a county, municipality, or political subdivision of  
15 the state, or an agency of a political subdivision.

16 (19) "Health care facility" or "facility" means any all  
17 or a portion of an institution, building, or agency or  
18 portion--thereof, private or public, excluding federal  
19 facilities, whether organized for profit or not, used,  
20 operated, or designed to provide health services, medical  
21 treatment, or nursing, rehabilitative, or preventive care to  
22 any person-or-persons individual. The term does not include  
23 offices of private physicians or dentists. The term includes  
24 but is not limited to ambulatory surgical facilities, health  
25 maintenance organizations, home health agencies, hospices,

1 hospitals, infirmaries, kidney treatment centers, long-term  
2 care facilities, medical assistance facilities, mental  
3 health centers, outpatient facilities, public health  
4 centers, rehabilitation facilities, residential treatment  
5 facilities, and adult day-care centers.

6 (20) "Health maintenance organization" means a public or  
7 private organization which that provides or arranges for  
8 health care services to enrollees on a prepaid or other  
9 financial basis, either directly through provider employees  
10 or through contractual or other arrangements with a provider  
11 or group of providers.

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

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

1 programs as an essential component.

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

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

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

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

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

1 standards and requirements.

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

5 (27) (a) "Long-term care facility" means a facility or  
6 part thereof--which of a facility that provides skilled  
7 nursing care, intermediate nursing care, or intermediate  
8 developmental disability care to a total of two or more  
9 persons individuals or that provides personal care to--more  
10 than--four--persons--who--are--not--related--to-the-owner-or  
11 administrator-by--blood-or--marriage. The term does not  
12 include adult--foster--care--licensed-under-52-3-303, ADULT  
13 FOSTER CARE LICENSED UNDER 52-3-303, community homes for the  
14 developmentally disabled licensed under 53-20-305, community  
15 homes for persons individuals with severe disabilities  
16 licensed under 52-4-203, youth care facilities licensed  
17 under 41-3-1142, hotels, motels, boardinghouses,  
18 roominghouses, or similar accommodations providing for  
19 transients, students, or persons individuals not requiring  
20 institutional health care, or juvenile and adult  
21 correctional facilities operating under the authority of the  
22 department of corrections and human services.

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

1 nurse on a 24-hour basis.

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

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

11 (e) "Personal care" means the provision of services and  
12 care which-do-not-require-nursing-skills--to, which comply  
13 with 50-5-226 through 50-5-230 and rules of the department,  
14 for residents needing some assistance in performing the  
15 activities of daily living.

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

20 (29) "Medical assistance facility" means a facility  
21 that:

22 (a) provides inpatient care to ill or injured persons  
23 individuals prior to their transportation to a hospital or  
24 provides inpatient medical care to persons individuals  
25 needing that care for a period of no longer than 96 hours;

1 and

2 (b) either is located in a county with fewer than six  
3 residents per square mile or is located more than 35 road  
4 miles from the nearest hospital.

5 (30) "Mental health center" means a facility providing  
6 services for the prevention or diagnosis of mental illness,  
7 the care and treatment of mentally ill patients or the  
8 rehabilitation of such persons mentally ill individuals, or  
9 any combination of these services.

10 (31) "Nonprofit health care facility" means a health  
11 care facility owned or operated by one or more nonprofit  
12 corporations or associations.

13 (32) "Observation bed" means a bed occupied for not more  
14 than 6 hours by a patient recovering from surgery or other  
15 treatment.

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

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

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

1 (36) "Person" means any individual, firm, partnership,  
2 association, organization, agency, institution, corporation,  
3 trust, estate, or governmental unit, whether organized for  
4 profit or not.

5 (37) "Public health center" means a publicly owned  
6 facility providing health services, including laboratories,  
7 clinics, and administrative offices.

8 (38) "Rehabilitation facility" means a facility which  
9 that is operated for the primary purpose of assisting in the  
10 rehabilitation of disabled persons individuals by providing  
11 comprehensive medical evaluations and services,  
12 psychological and social services, or vocational evaluation  
13 and training or any combination of these services and in  
14 which the major portion of the services is furnished within  
15 the facility.

16 (39) "Resident" means ~~a person~~ an individual who is in a  
17 long-term care facility for intermediate or personal care.

18 (40) "Residential psychiatric care" means active  
19 psychiatric treatment provided in a residential treatment  
20 facility to psychiatrically impaired individuals with  
21 persistent patterns of emotional, psychological, or  
22 behavioral dysfunction of such severity as to require  
23 24-hour supervised care to adequately treat or remedy the  
24 individual's condition. Residential psychiatric care must be  
25 individualized and designed to achieve the patient's

1 discharge to less restrictive levels of care at the earliest  
2 possible time.

3 (41) "Residential treatment facility" means a facility  
4 operated for the primary purpose of providing residential  
5 psychiatric care to persons individuals under 21 years of  
6 age.

7 (42) "State health plan" means the plan prepared by the  
8 department to project the need for health care facilities  
9 within Montana and approved by the statewide health  
10 coordinating council and the governor."

11 **Section 2.** Section 50-5-226, MCA, is amended to read:

12 "50-5-226. Placement in personal-care facilities. (1) A  
13 personal-care facility may ~~not have as a resident a person~~  
14 ~~who is:~~

15 ~~{a}--in need of medical or physical restraints;~~

16 ~~{b}--nonambulatory or bedridden;~~

17 ~~{c}--totally incontinent; or~~

18 ~~{d}--less than 18 years of age~~ provide personal-care  
19 services to a resident who is 18 years of age or older and  
20 in need of the personal care for which the facility is  
21 licensed under 50-5-227.

22 (2) A resident of a personal-care facility licensed as  
23 a category A facility under 50-5-227 may obtain third-party  
24 provider services for skilled nursing care for no more than  
25 20 consecutive days at a time.

1 (3) A resident of a personal-care facility licensed as  
2 a category B facility under 50-5-227 must have a signed  
3 statement from a physician agreeing to the resident's  
4 admission to the facility if the resident is:

5 (a) in need of skilled nursing care;

6 (b) in need of medical, physical, or chemical  
7 restraint;

8 (c) nonambulatory or bedridden;

9 (d) incontinent to the extent that bowel or bladder  
10 control is absent; or

11 (e) unable to self-administer medications.

12 (4) A RESIDENT OF A PERSONAL CARE FACILITY MUST HAVE A  
13 SIGNED STATEMENT, RENEWED ON AN ANNUAL BASIS FOR A CATEGORY  
14 A FACILITY AND ON A QUARTERLY BASIS FOR A CATEGORY B  
15 FACILITY, FROM A PHYSICIAN, A PHYSICIAN-ASSISTANT CERTIFIED,  
16 A NURSE PRACTITIONER, OR A REGISTERED NURSE, WHOSE WORK IS  
17 UNRELATED TO THE OPERATION OF THE FACILITY AND WHO:

18 (A) ACTUALLY VISITED THE FACILITY WITHIN THE YEAR  
19 COVERED BY THE STATEMENT FOR A CATEGORY A FACILITY AND  
20 WITHIN THE CALENDAR QUARTER COVERED BY THE STATEMENT FOR A  
21 CATEGORY B FACILITY;

22 (B) HAS CERTIFIED THAT THE PARTICULAR NEEDS OF THE  
23 RESIDENT CAN BE ADEQUATELY MET IN THE FACILITY; AND

24 (C) HAS CERTIFIED THAT THERE HAS BEEN NO SIGNIFICANT  
25 CHANGE IN HEALTH CARE STATUS THAT WOULD REQUIRE ANOTHER



1 LEVEL OF CARE.

2 ~~(2)(4)~~(5) The department shall, in consultation with  
3 the department of social and rehabilitation services,  
4 provide by rule:

5 (a) an application or placement procedure informing a  
6 prospective resident and, if applicable, ~~his~~ the resident's  
7 physician of:

8 (i) physical and mental standards for residents of  
9 personal-care facilities;

10 (ii) requirements for placement in a facility with a  
11 higher standard of care if a resident's condition  
12 deteriorates; and

13 (iii) the services offered by the facility and services  
14 that a resident may receive from third-party providers while  
15 resident in the facility;

16 (b) standards to be used by a facility and, if  
17 appropriate, by a screening agency to screen residents and  
18 prospective residents to prevent residence by persons  
19 prohibited by individuals referred to in subsection (3);

20 (c) a method by which the results of any screening  
21 decision made pursuant to rules established under subsection  
22 ~~(2)(b)~~ ~~(4)(b)~~ (5)(B) may be appealed by the facility  
23 operator or by or on behalf of a resident or prospective  
24 resident; and

25 (d) standards for operating a CATEGORY A personal-care

1 facility, including standards for the physical, structural,  
2 environmental, sanitary, infection control, dietary, social,  
3 staffing, and recordkeeping components of a facility; AND

4 (E) STANDARDS FOR OPERATING A CATEGORY B PERSONAL-CARE  
5 FACILITY, WHICH MUST INCLUDE THE STANDARDS FOR A CATEGORY A  
6 PERSONAL-CARE FACILITY AND ADDITIONAL STANDARDS FOR  
7 ASSESSMENT OF RESIDENTS, CARE PLANNING, QUALIFICATIONS AND  
8 TRAINING OF STAFF, RESTRAINT USE AND REDUCTION, PREVENTION  
9 AND CARE OF PRESSURE SORES, INCONTINENCE CARE, AND THE  
10 STORAGE AND ADMINISTRATION OF DRUGS."

11 **Section 3.** Section 50-5-227, MCA, is amended to read:

12 "50-5-227. Licensing personal-care facilities. (1) The  
13 department shall, in consultation with the department of  
14 social and rehabilitation services, by rule adopt standards  
15 for licensing and operation of personal-care facilities to  
16 implement the provisions of 50-5-225 and 50-5-226.

17 (2) The following licensing categories must be used by  
18 the department in adopting rules under subsection (1):

19 (a) category A--a facility providing personal care to  
20 six or more residents who may not be:

21 (i) in need of skilled nursing care;

22 (ii) in need of medical, chemical, or physical  
23 restraint;

24 (iii) nonambulatory or bedridden;

25 (iv) incontinent to the extent that bowel or bladder

1 control is absent; or  
 2 (v) unable to self-administer medications; or  
 3 (b) category B--a facility providing personal care to  
 4 five or fewer residents who may be:  
 5 (i) in need of skilled nursing care;  
 6 (ii) in need of medical, chemical, or physical  
 7 restraint;  
 8 (iii) nonambulatory or bedridden;  
 9 (iv) incontinent to the extent that bowel or bladder  
 10 control is absent; or  
 11 (v) unable to self-administer medications.  
 12 ~~†2†~~(3) The department may by rule establish license  
 13 fees, inspection fees, and fees for patient screening. Such  
 14 fees Fees must be reasonably related to service costs."

15 **Section 4.** Section 50-5-301, MCA, is amended to read:  
 16 "50-5-301. When certificate of need is required --  
 17 definitions. (1) Unless a person has submitted an  
 18 application for and is the holder of a certificate of need  
 19 granted by the department, he the person may not initiate  
 20 any of the following:  
 21 (a) the incurring of an obligation by or on behalf of a  
 22 health care facility for any capital expenditure, other than  
 23 to acquire an existing health care facility or to replace  
 24 major medical equipment with equipment performing  
 25 substantially the same function and in the same manner, that

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

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

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

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

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

22 (c) the addition of a health service that is offered by  
 23 or on behalf of a health care facility which that was not  
 24 offered by or on behalf of the facility within the 12-month  
 25 period before the month in which the service would be .

offered and which that will result in additional annual operating and amortization expenses of \$150,000 or more;

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

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

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

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

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

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

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in

50-5-101; or

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

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

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

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or residential treatment facility, ~~or--personal care-facility~~. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including

chemical dependency counselors.

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

(ii) The term does not include ~~adult--foster---~~care ~~personal-care--facilities~~ ADULT FOSTER CARE, licensed under 52-3-303 50-5-227 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

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

(d) ~~"Personal-care-facility"~~ means ~~an--entity--which~~ provides services and care which do not require nursing

skills--to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).

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

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

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

#### Section 5. Section 50-8-101, MCA, is amended to read:--

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of health and environmental sciences, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities, and

(ii) inpatient freestanding or intermediate transitional

1 living--facilities--for--alcohol/drug-treatment-or-emergency  
 2 detoxification;  
 3 (b)--for-the-department-of-family-services;  
 4 (i)--community-homes-for-the--developmentally--disabled;  
 5 and community--homes--for--physically-disabled-persons; and  
 6 adult-foster-care-homes; and  
 7 (ii)--youth-care-facilities; and  
 8 (c)--for-the--department--of--health--and--environmental  
 9 sciences;  
 10 (i)--public--accommodations; including roominghouses and  
 11 retirement-homes; hotels; and motels;  
 12 (ii)--health--care--facilities--or--services; including  
 13 hospitals;--skilled--and--intermediate-nursing-home-services;  
 14 and intermediate-care-nursing-home-services-for-the-mentally  
 15 retarded;  
 16 (iii)--freestanding-medical-facilities-or-care; including  
 17 infirmaries;--kidney--treatment--centers;--and--home--health  
 18 agencies; and  
 19 (iv)--personal-care-facilities;  
 20 (3)--"inspecting--authority"--means--the--department--or  
 21 agency-authorized-by-statute-to-perform-a--given--inspection  
 22 necessary-for-certification-for-licensure;  
 23 (4)--"licensing--agency"--means--the--agency--that--is  
 24 authorized-by-statute-to-issue-the-license;  
 25 **Section 6.**--Section 52-3-811, MCA, is amended to read:--

1 **52-3-811--Reports.**--(1)--When--the--professionals--and  
 2 other--persons--listed--in--subsection--(3)--know--or--have  
 3 reasonable--cause--to--suspect--that--an--older--person--or--a  
 4 developmentally-disabled--person--known--to--them--in--their  
 5 professional--or--official--capacities--has--been--subjected--to  
 6 abuse; exploitation; or neglect; they shall:  
 7 (a)--if--the--person--is--not--a--resident--of--a--long-term-care  
 8 facility; report the matter to:  
 9 (i)--the--department--of--family--services--or--its--local  
 10 affiliate;  
 11 (ii)--the--county--attorney--of--the--county--in--which--the  
 12 person--resides--or--in--which--the--acts--that--are--the--subject--of  
 13 the--report--occurred;  
 14 (b)--if--the--person--is--a--resident--of--a--long-term-care  
 15 facility; report the matter to the long-term-care ombudsman  
 16 appointed--under--the--provisions--of--42-U.S.C.-3027(a)(12)--and  
 17 to the department of health and environmental sciences.--The  
 18 department--shall--investigate--the--matter--pursuant--to--its  
 19 authority--in--50-5-204--and; if it finds--any--allegations--of  
 20 abuse; exploitation; or neglect contained in the report to  
 21 be substantially true; forward a copy of the report--to--the  
 22 department--of--family--services--and--to--the--county--attorney--as  
 23 provided--in--subsection--(1)(a)(ii);  
 24 (2)--If the report required in subsection--(1)--involves  
 25 an--act--or--omission--of--the--department--of--family--services

1 which that may--be--construed--as--abuse,--exploitation,--or  
 2 neglect,--a--copy--of--the--report--may--not--be--sent--to--the  
 3 department--but--must--be--sent--instead--to--the--county--attorney  
 4 of--the--county--in--which--the--older--person--or--the  
 5 developmentally-disabled-person-resides--or--in--which--the--acts  
 6 that--are--the--subject--of--the--report--occurred;  
 7 {3}--Professionals--and--other--persons--required--to--report  
 8 are:  
 9 {a}--a--physician,--resident,--intern,--professional--or  
 10 practical--nurse,--physician's--assistant,--or--member--of--a  
 11 hospital--staff--engaged--in--the--admission,--examination,--care,  
 12 or--treatment--of--persons;  
 13 {b}--an--osteopath,--dentist,--denturist,--chiropractor,  
 14 optometrist,--podiatrist,--medical--examiner,--coroner,--or--any  
 15 other--health--or--mental--health--professional;  
 16 {c}--an--ambulance--attendant;  
 17 {d}--a--social--worker--or--other--employee--of--the--state,--a  
 18 county,--or--a--municipality--assisting--an--older--person--or--a  
 19 developmentally-disabled-person--in--the--application--for--or  
 20 receipt--of--public--assistance--payments--or--services;  
 21 {e}--a--person--who--maintains--or--is--employed--by--a  
 22 roominghouse,--retirement--home,--nursing--home,--group--home,--or  
 23 adult--foster--care--home personal-care-facility;  
 24 {f}--an--attorney,--unless--he the--attorney acquired  
 25 knowledge--of--the--facts--required--to--be--reported--from--a--client

1 and--the--attorney--client--privilege--applies;--and  
 2 {g}--a--peace--officer--or--other--law--enforcement--official;  
 3 {4}--Any--other--person--may--submit--a--report--as--provided--in  
 4 subsection--(1)."  
 5 **Section 7.**--Section 76-2-411, MCA, is amended to read:--  
 6 "76-2-411. Definition of community residential  
 7 facility. "Community residential facility" means:  
 8 {1}--a--community--group--home--for--developmentally,  
 9 mentally,--or--severely--disabled--persons--which that does--not  
 10 provide--skilled--or--intermediate--nursing--care;  
 11 {2}--a--youth--foster--home--or--youth--group--home--as--defined  
 12 in 41-3-1102;  
 13 {3}--a--halfway--house--operated--in--accordance--with  
 14 regulations--of--the--department--of--health--and--environmental  
 15 sciences corrections--and--human--services for--the  
 16 rehabilitation--of--alcoholics--or--drug--dependent--persons;--or  
 17 {4}--a--licensed--adult--foster--family--care--home  
 18 personal-care-facility."  
 19 **NEW SECTION. Section 8.**--Repealer. Sections 52-3-301,--  
 20 52-3-302,--52-3-303,--52-3-304,--52-3-305,--52-3-311,--52-3-312,  
 21 52-3-313,--and--52-3-314, MCA, are repealed;  
 22 **SECTION 5.** SECTION 52-1-104, MCA, IS AMENDED TO READ:  
 23 "52-1-104. Department authorized to provide and set  
 24 standards for supplementary payments. (1) The Except as  
 25 provided in this section, the department shall have the

authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B personal-care facilities licensed pursuant to 50-5-227."

**NEW SECTION. Section 6. Applicability.** ~~[THIS ACT]~~ [SECTIONS 1 THROUGH 4] and the rules of the department of health and environmental sciences adopted pursuant to [sections 2 and 3] apply to licenses for personal care facilities issued or renewed after July 1, 1994.

**NEW SECTION. Section 7. Effective Dates.** ~~DATE. (1) {Sections--27--37--97--and--this--section}--are-effective-on passage-and-approval-~~

~~{2}--{Sections-1-and-4-through-8}--are~~ [THIS ACT] IS effective July 1, 1994.

-End-

## 1 SENATE BILL NO. 118

2 INTRODUCED BY TOWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE LICENSING  
5 CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES;  
6 ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF  
7 NEED REQUIREMENTS; ~~ELIMINATING--ADULT--FOSTER--FAMILY--CARE~~  
8 ~~HOMES;~~ PROHIBITING SUPPLEMENTARY PAYMENTS FOR RESIDENTS OF  
9 CERTAIN PERSONAL-CARE FACILITIES; PROHIBITING MEDICAID  
10 PAYMENT TO PERSONAL-CARE FACILITIES; AMENDING SECTIONS  
11 50-5-101, 50-5-226, 50-5-227, AND 50-5-301, 50-8-101,  
12 52-3-811, ~~AND~~ 76-2-411, AND 52-1-104, AND 53-6-101, MCA;  
13 ~~REPEALING SECTIONS 52-3-301, 52-3-302, 52-3-303, 52-3-304,~~  
14 ~~52-3-305, 52-3-311, 52-3-312, 52-3-313, AND 52-3-314, MCA;~~  
15 AND PROVIDING AN EFFECTIVE DATE DATE AND AN APPLICABILITY  
16 DATE."

17  
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because  
20 50-5-226 requires the department of health and environmental  
21 sciences to adopt standards governing personal-care  
22 facilities and because 50-5-227 requires the department to  
23 adopt rules implementing two categories of personal-care  
24 facilities.

25 The legislature intends that the standards to be adopted

1 under 50-5-226 involve only those basic aspects of care that  
2 are not already part of local ordinances and that the rules  
3 do not overregulate or require more than absolutely  
4 necessary for the safety of the residents because, in many  
5 instances, the facilities in which residents will live are  
6 the homes of those persons managing them.

7 The legislature recognizes a preference by many senior  
8 citizens and their relatives for seniors to live in a home  
9 setting in a private home or residence rather than in a  
10 nursing home. The legislature further recognizes that there  
11 are a number of persons in this state who are willing to  
12 care for seniors in their own homes or in homes operated by  
13 them in which the home setting is preserved. The legislature  
14 further recognizes that the quality of care given in these  
15 homes or residences may be preferable under many  
16 circumstances because the patient-to-staff ratio is  
17 considerably lower than in a nursing home and the home  
18 setting avoids the institutional atmosphere and associated  
19 problems.

20 Finally, the legislature recognizes that these homes can  
21 be considerably less expensive than nursing homes.  
22 Therefore, the legislature specifically finds that the use  
23 of private homes or residences in which the home setting is  
24 preserved is to be recognized as the preferred treatment for  
25 all persons who can receive adequate care in such a



1 facility.

2  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 **Section 1.** Section 50-5-101, MCA, is amended to read:

5 "50-5-101. Definitions. As used in parts 1 through 4 of  
6 this chapter, unless the context clearly indicates  
7 otherwise, the following definitions apply:

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

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

13 (3) "Affected person" means an applicant for  
14 certificate of need, a member of the public who will be  
15 served by the proposal, a health care facility located in  
16 the geographic area affected by the application, an agency  
17 which that establishes rates for health care facilities, a  
18 third-party payer who reimburses health care facilities in  
19 the area affected by the proposal, or an agency which that  
20 plans or assists in planning for such health care  
21 facilities.

22 (4) "Ambulatory surgical facility" means a facility,  
23 not part of a hospital, which that provides surgical  
24 treatment to patients not requiring hospitalization. This  
25 type of facility may include observation beds for patient

1 recovery from surgery or other treatment.

2 (5) "Batch" means those letters of intent to seek  
3 approval for new beds or major medical equipment that are  
4 accumulated during a single batching period.

5 (6) "Batching period" means a period, not exceeding 1  
6 month, established by department rule during which letters  
7 of intent to seek approval for new beds or major medical  
8 equipment are accumulated pending further processing of all  
9 letters of intent within the batch.

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

12 (8) "Capital expenditure" means:

13 (a) an expenditure made by or on behalf of a health  
14 care facility that, under generally accepted accounting  
15 principles, is not properly chargeable as an expense of  
16 operation and maintenance; or

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

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

23 (10) "Challenge period" means a period, not exceeding 1  
24 month, established by department rule during which any a  
25 person may apply for comparative review with an applicant

whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

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

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

(14) "Comparative review" means a joint review of two or more certificate of need applications which that are determined by the department to be competitive in that the

granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

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

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

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

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

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

1 maintenance organizations, home health agencies, hospices,  
2 hospitals, infirmaries, kidney treatment centers, long-term  
3 care facilities, medical assistance facilities, mental  
4 health centers, outpatient facilities, public health  
5 centers, rehabilitation facilities, residential treatment  
6 facilities, and adult day-care centers.

7 (20) "Health maintenance organization" means a public or  
8 private organization which that provides or arranges for  
9 health care services to enrollees on a prepaid or other  
10 financial basis, either directly through provider employees  
11 or through contractual or other arrangements with a provider  
12 or group of providers.

13 (21) "Home health agency" means a public agency or  
14 private organization or subdivision thereof which of the  
15 agency or organization that is engaged in providing home  
16 health services to individuals in the places where they  
17 live. Home health services must include the services of a  
18 licensed registered nurse and at least one other therapeutic  
19 service and may include additional support 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~~ the patient's family arising  
24 out of physical, psychological, spiritual, social, and  
25 economic stresses experienced during the final stages of

1 illness and dying and that includes formal bereavement  
2 programs as an 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 individuals. Services provided may  
7 or may not include obstetrical care, emergency care, or any  
8 other service as allowed by state licensing authority. A  
9 hospital has an organized medical staff which that is on  
10 call and available within 20 minutes, 24 hours per day, 7  
11 days per 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) "Infirmiry" 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 "infirmiry--A" provides outpatient and inpatient  
20 care;

21 (b) an "infirmiry--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~~ a health care facility that it finds meets its  
2 standards and requirements.

3 (26) "Kidney treatment center" means a facility which  
4 that 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 of a facility that provides skilled  
8 nursing care, intermediate nursing care, or intermediate  
9 developmental disability care to a total of two or more  
10 persons individuals or that provides personal care to--more  
11 ~~than--four--persons--who--are--not--related--to--the--owner--or~~  
12 ~~administrator--by--blood--or--marriage.~~ The term does not  
13 include ~~adult--foster--care--licensed--under--52-3-303,~~ ADULT  
14 FOSTER CARE LICENSED UNDER 52-3-303, community homes for the  
15 developmentally disabled licensed under 53-20-305, community  
16 homes for persons individuals with severe disabilities  
17 licensed under 52-4-203, youth care facilities licensed  
18 under 41-3-1142, hotels, motels, boardinghouses,  
19 roominghouses, or similar accommodations providing for  
20 transients, students, or persons individuals not requiring  
21 institutional health care, or juvenile and adult  
22 correctional facilities operating under the authority of the  
23 department of corrections and human services.

24 (b) "Skilled nursing care" means the provision of  
25 nursing care services, health-related services, and social

1 services under the supervision of a licensed registered  
2 nurse on a 24-hour basis.

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

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

12 (e) "Personal care" means the provision of services and  
13 ~~care which do not require nursing skills--to--which--comply~~  
14 ~~with--50-5-226--through--50-5-230--and--rules--of--the--department,~~  
15 for residents needing some assistance in performing the  
16 activities of daily living.

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

21 (29) "Medical assistance facility" means a facility  
22 that:

23 (a) provides inpatient care to ill or injured persons  
24 individuals prior to their transportation to a hospital or  
25 provides inpatient medical care to persons individuals

1 needing that care for a period of no longer than 96 hours;  
2 and

3 (b) either is located in a county with fewer than six  
4 residents per square mile or is located more than 35 road  
5 miles from the nearest hospital.

6 (30) "Mental health center" means a facility providing  
7 services for the prevention or diagnosis of mental illness,  
8 the care and treatment of mentally ill patients or the  
9 rehabilitation of such-persons mentally ill individuals, or  
10 any combination of these services.

11 (31) "Nonprofit health care facility" means a health  
12 care facility owned or operated by one or more nonprofit  
13 corporations or associations.

14 (32) "Observation bed" means a bed occupied for not more  
15 than 6 hours by a patient recovering from surgery or other  
16 treatment.

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

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

25 (35) "Patient" means an individual obtaining services,

1 including skilled nursing care, from a health care facility.

2 (36) "Person" means any individual, firm, partnership,  
3 association, organization, agency, institution, corporation,  
4 trust, estate, or governmental unit, whether organized for  
5 profit or not.

6 (37) "Public health center" means a publicly owned  
7 facility providing health services, including laboratories,  
8 clinics, and administrative offices.

9 (38) "Rehabilitation facility" means a facility which  
10 that is operated for the primary purpose of assisting in the  
11 rehabilitation of disabled persons individuals by providing  
12 comprehensive medical evaluations and services,  
13 psychological and social services, or vocational evaluation  
14 and training or any combination of these services and in  
15 which the major portion of the services is furnished within  
16 the facility.

17 (39) "Resident" means ~~a-person~~ an individual who is in a  
18 long-term care facility for intermediate or personal care.

19 (40) "Residential psychiatric care" means active  
20 psychiatric treatment provided in a residential treatment  
21 facility to psychiatrically impaired individuals with  
22 persistent patterns of emotional, psychological, or  
23 behavioral dysfunction of such severity as to require  
24 24-hour supervised care to adequately treat or remedy the  
25 individual's condition. Residential psychiatric care must be

1 individualized and designed to achieve the patient's  
2 discharge to less restrictive levels of care at the earliest  
3 possible time.

4 (41) "Residential treatment facility" means a facility  
5 operated for the primary purpose of providing residential  
6 psychiatric care to persons individuals under 21 years of  
7 age.

8 (42) "State health plan" means the plan prepared by the  
9 department to project the need for health care facilities  
10 within Montana and approved by the statewide health  
11 coordinating council and the governor."

12 **Section 2.** Section 50-5-226, MCA, is amended to read:

13 "50-5-226. Placement in personal-care facilities. (1) A  
14 personal-care facility may not have as a resident a person  
15 who is:

16 ~~{a}--in-need-of-medical-or-physical-restraints;~~

17 ~~{b}--nonambulatory-or-bedridden;~~

18 ~~{c}--totally-incontinent;-or~~

19 ~~{d}--less-than-18-years--of--age~~ provide personal-care  
20 services to a resident who is 18 years of age or older and  
21 in need of the personal care for which the facility is  
22 licensed under 50-5-227.

23 (2) A resident of a personal-care facility licensed as  
24 a category A facility under 50-5-227 may obtain third-party  
25 provider services for skilled nursing care for no more than

1 20 consecutive days at a time.

2 (3) A resident of a personal-care facility licensed as  
3 a category B facility under 50-5-227 must have a signed  
4 statement from a physician agreeing to the resident's  
5 admission to the facility if the resident is:

6 (a) in need of skilled nursing care;

7 (b) in need of medical, physical, or chemical  
8 restraint;

9 (c) nonambulatory or bedridden;

10 (d) incontinent to the extent that bowel or bladder  
11 control is absent; or

12 (e) unable to self-administer medications.

13 (4) A RESIDENT OF A PERSONAL CARE FACILITY WHO NEEDS  
14 SKILLED NURSING CARE MUST HAVE A SIGNED STATEMENT, RENEWED  
15 ON AN ANNUAL BASIS FOR A CATEGORY A FACILITY AND ON A  
16 QUARTERLY BASIS FOR A CATEGORY B FACILITY, FROM A PHYSICIAN,  
17 A PHYSICIAN-ASSISTANT CERTIFIED, A NURSE PRACTITIONER, OR A  
18 REGISTERED NURSE, WHOSE WORK IS UNRELATED TO THE OPERATION  
19 OF THE FACILITY AND WHO:

20 (A) ACTUALLY VISITED THE FACILITY WITHIN THE YEAR  
21 COVERED BY THE STATEMENT FOR A CATEGORY A FACILITY AND  
22 WITHIN THE CALENDAR QUARTER COVERED BY THE STATEMENT FOR A  
23 CATEGORY B FACILITY;

24 (B) HAS CERTIFIED THAT THE PARTICULAR NEEDS OF THE  
25 RESIDENT CAN BE ADEQUATELY MET IN THE FACILITY; AND

1 (C) HAS CERTIFIED THAT THERE HAS BEEN NO SIGNIFICANT  
 2 CHANGE IN HEALTH CARE STATUS THAT WOULD REQUIRE ANOTHER  
 3 LEVEL OF CARE.

4 (2)(4)(5) The department shall, in consultation with  
 5 the department of social and rehabilitation services,  
 6 provide by rule:

7 (a) an application or placement procedure informing a  
 8 prospective resident and, if applicable, his the resident's  
 9 physician of:

10 (i) physical and mental standards for residents of  
 11 personal-care facilities;

12 (ii) requirements for placement in a facility with a  
 13 higher standard of care if a resident's condition  
 14 deteriorates; and

15 (iii) the services offered by the facility and services  
 16 that a resident may receive from third-party providers while  
 17 resident in the facility;

18 (b) standards to be used by a facility and, if  
 19 appropriate, by a screening agency to screen residents and  
 20 prospective residents to prevent residence by persons  
 21 prohibited by individuals referred to in subsection(2)(3);

22 (c) a method by which the results of any screening  
 23 decision made pursuant to rules established under subsection  
 24 (2)(b) (4)(b) (5)(B) may be appealed by the facility  
 25 operator or by or on behalf of a resident or prospective

1 resident; and

2 (d) standards for operating a CATEGORY A personal-care  
 3 facility, including standards for the physical, structural,  
 4 environmental, sanitary, infection control, dietary, social,  
 5 staffing, and recordkeeping components of a facility; AND

6 (E) STANDARDS FOR OPERATING A CATEGORY B PERSONAL-CARE  
 7 FACILITY, WHICH MUST INCLUDE THE STANDARDS FOR A CATEGORY A  
 8 PERSONAL-CARE FACILITY AND ADDITIONAL STANDARDS FOR  
 9 ASSESSMENT OF RESIDENTS, CARE PLANNING, QUALIFICATIONS AND  
 10 TRAINING OF STAFF, RESTRAINT USE AND REDUCTION, PREVENTION  
 11 AND CARE OF PRESSURE SORES, INCONTINENCE CARE, AND THE  
 12 STORAGE AND ADMINISTRATION OF DRUGS."

13 **Section 3.** Section 50-5-227, MCA, is amended to read:

14 **"50-5-227. Licensing personal-care facilities.** (1) The  
 15 department shall, in consultation with the department of  
 16 social and rehabilitation services, by rule adopt standards  
 17 for licensing and operation of personal-care facilities to  
 18 implement the provisions of 50-5-225 and 50-5-226.

19 (2) The following licensing categories must be used by  
 20 the department in adopting rules under subsection (1):

21 (a) category A--a facility providing personal care to  
 22 six or more residents who may not be:

23 (i) in need of skilled nursing care;

24 (ii) in need of medical, chemical, or physical  
 25 restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B--a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

~~(2)~~(3) The department may by rule establish license fees, inspection fees, and fees for patient screening. Such fees Fees must be reasonably related to service costs."

**Section 4.** Section 50-5-301, MCA, is amended to read:

"50-5-301. 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 the person 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;

(c) the addition of a health service that is offered by or on behalf of a health care facility which that was not



1 offered by or on behalf of the facility within the 12-month  
2 period before the month in which the service would be  
3 offered and which that will result in additional annual  
4 operating and amortization expenses of \$150,000 or more;

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

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

13 (i) the person submits the letter of intent required by  
14 50-5-302(2); and

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

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

22 (g) the expansion of the geographical service area of a  
23 home health agency;

24 (h) the use of hospital beds to provide services to  
25 patients or residents needing only skilled nursing care,

1 intermediate nursing care, or intermediate developmental  
2 disability care, as those levels of care are defined in  
3 50-5-101; or

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

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

14 (3) For purposes of this part, the following  
15 definitions apply:

16 (a) "Health care facility" or "facility" means a  
17 nonfederal ambulatory surgical facility, home health agency,  
18 long-term care facility, medical assistance facility, mental  
19 health center with inpatient services, inpatient chemical  
20 dependency facility, rehabilitation facility with inpatient  
21 services, or residential treatment facility, or personal  
22 care-facility. The term does not include:

23 (i) a hospital, except to the extent that a hospital is  
24 subject to certificate of need requirements pursuant to  
25 subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

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

(ii) The term does not include ~~adult--foster--care~~ personal-care-facilities ADULT FOSTER CARE, licensed under 52-3-303 50-5-227 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

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

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

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

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

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

**Section 5.--Section 50-8-101, MCA, is amended to read:--**

**"50-8-101.--Definitions.--As--used--in--this--part,--the following definitions apply:**

**{1}--"Department"--means--the--department--of--corrections and---human---services,---the---department---of--health--and environmental--sciences,--and--the--department---of---family services;**

**{2}--"Facility"--means:**

**{a}--for---the---department--of--corrections--and--human services,--nonmedical--facilities--including:**

1       (i)--mental-health-transitional-living-facilities;-and  
 2       (ii)--inpatient-freestanding-or-intermediate-transitional  
 3       living-facilities-for-alcohol/drug--treatment--or--emergency  
 4       detoxification;  
 5       (b)--for-the-department-of-family-services;  
 6       (i)--community--homes--for-the-developmentally-disabled;  
 7       and community-homes-for--physically--disabled--persons;-and  
 8       adult-foster-care-homes;-and  
 9       (ii)--youth-care-facilities;-and  
 10       (c)--for--the--department--of--health--and--environmental  
 11       sciences;  
 12       (i)--public-accommodations;-including-roominghouses--and  
 13       retirement-homes;-hotels;-and-motels;  
 14       (ii)--health---care--facilities--or--services;-including  
 15       hospitals;-skilled-and-intermediate-nursing--home--services;  
 16       and-intermediate-care-nursing-home-services-for-the-mentally  
 17       retarded;  
 18       (iii)--freestanding-medical-facilities-or-care;-including  
 19       infirmaries;-kidney--treatment--centers;-and--home--health  
 20       agencies;-and  
 21       (iv)--personal-care-facilities;  
 22       (3)--"inspecting--authority"--means--the--department--or  
 23       agency--authorized--by-statute-to-perform-a-given-inspection  
 24       necessary-for-certification-for-licensure;  
 25       (4)--"licensing--agency"--means--the--agency---that---is

1       authorized-by-statute-to-issue-the-license."

2       **Section 6.**--Section 52-3-811, MCA, is amended to read:--

3       "52-3-811.--Reports.--(1)--When--the--professionals--and  
 4       other---persons--listed--in--subsection--(3)--know--or--have  
 5       reasonable-cause-to--suspect--that--an--older--person--or--a  
 6       developmentally--disabled--person--known--to--them--in-their  
 7       professional-or-official-capacities-has--been--subjected--to  
 8       abuse;-exploitation;-or-neglect;-they-shall:

9       (a)--if-the-person-is-not-a-resident-of-a-long-term-care  
 10       facility;-report-the-matter-to:

11       (i)--the--department--of--family--services--or-its-local  
 12       affiliate;

13       (ii)--the-county-attorney-of--the--county--in--which--the  
 14       person--resides-or-in-which-the-acts-that-are-the-subject-of  
 15       the-report-occurred;

16       (b)--if-the-person-is-a-resident--of--a--long-term--care  
 17       facility;-report-the-matter-to-the-long-term-care-ombudsman  
 18       appointed-under-the-provisions-of-42-U.S.C.-3027(a)(12)--and  
 19       to--the-department-of-health-and-environmental-sciences.-The  
 20       department-shall-investigate--the--matter--pursuant--to--its  
 21       authority--in--50-5-204--and-if-it-finds-any-allegations-of  
 22       abuse;-exploitation;-or-neglect-contained-in-the--report--to  
 23       be--substantially--true;-forward-a-copy-of-the-report-to-the  
 24       department-of-family-services-and-to-the-county-attorney--as  
 25       provided-in-subsection-(1)(a)(ii);

{2}--if--the--report--required--in--subsection--(1)--involves an act or omission of--the--department--of--family--services which that may--be--construed--as--abuse, exploitation, or neglect, a copy of--the--report--may--not--be--sent--to--the department--but--must--be--sent--instead--to--the--county--attorney of--the--county--in--which--the--older--person--or--the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

{3}--Professionals--and--other--persons--required--to--report are:

{a}--a--physician,--resident,--intern,--professional--or practical nurse,--physician's--assistant,--or--member--of--a hospital--staff--engaged--in--the--admission,--examination,--care, or treatment of persons;

{b}--an--osteopath,--dentist,--denturist,--chiropractor, optometrist,--podiatrist,--medical--examiner,--coroner,--or--any other health or mental health professional;

{c}--an--ambulance--attendant;

{d}--a--social--worker--or--other--employee--of--the--state,--a county,--or--a--municipality--assisting--an--older--person--or--a developmentally disabled person--in--the--application--for--or receipt--of--public--assistance--payments--or--services;

{e}--a--person--who--maintains--or--is--employed--by--a roominghouse,--retirement--home,--nursing--home,--group--home,--or adult foster care home personal care facility;

{f}--an--attorney,--unless--he the--attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

{g}--a--peace--officer--or--other--law--enforcement--official;

{4}--Any other person may submit a report as provided in subsection (1)."

**Section 7.**--Section 76-2-411, MCA, is amended to read:--

"76-2-411. Definition--of--community--residential facility. "Community residential facility" means:

{1}--a--community--group--home--for--developmentally, mentally, or severely disabled persons which that does not provide skilled or intermediate nursing care;

{2}--a--youth--foster--home--or--youth--group--home--as--defined in 41-3-1102;

{3}--a--halfway--house--operated--in--accordance--with regulations--of--the--department--of--health--and--environmental sciences corrections--and--human--services for--the rehabilitation of alcoholics or drug dependent persons; or

{4}--a--licensed--adult--foster--family--care--home personal care facility."

**NEW SECTION.**--Section 8.--Repealer.--Sections 52-3-301, 52-3-302, 52-3-303, 52-3-304, 52-3-305, 52-3-311, 52-3-312, 52-3-313, and 52-3-314, MCA, are repealed.

**SECTION 5.** SECTION 52-1-104, MCA, IS AMENDED TO READ:

"52-1-104. Department authorized to provide and set

standards for supplementary payments. (1) The Except as provided in this section, the department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B personal-care facilities licensed pursuant to 50-5-227."

**SECTION 6. SECTION 53-6-101, MCA, IS AMENDED TO READ:**

"53-6-101. Montana medicaid program -- authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the

Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
- (b) outpatient hospital services;
- (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
- (d) skilled nursing services in long-term care facilities;
- (e) physicians' services;
- (f) nurse specialist services;
- (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
- (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
- (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
- (j) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
- (k) health services provided under a physician's orders by a public health department; and
- (l) federally qualified health center services, as

1 defined in 42 U.S.C. 1396d(1)(2).

2 (3) Medical assistance provided by the Montana medicaid  
3 program may, as provided by department rule, also include  
4 the following services:

5 (a) medical care or any other type of remedial care  
6 recognized under state law, furnished by licensed  
7 practitioners within the scope of their practice as defined  
8 by state law;

9 (b) home health care services;

10 (c) private-duty nursing services;

11 (d) dental services;

12 (e) physical therapy services;

13 (f) mental health center services administered and  
14 funded under a state mental health program authorized under  
15 Title 53, chapter 21, part 2;

16 (g) clinical social worker services;

17 (h) prescribed drugs, dentures, and prosthetic devices;

18 (i) prescribed eyeglasses;

19 (j) other diagnostic, screening, preventive,  
20 rehabilitative, chiropractic, and osteopathic services;

21 (k) inpatient psychiatric hospital services for persons  
22 under 21 years of age;

23 (l) services of professional counselors licensed under  
24 Title 37, chapter 23;

25 (m) hospice care, as defined in 42 U.S.C. 1396d(o);

1 (n) case management services as provided in 42 U.S.C.  
2 1396d(a) and 1396n(g), including targeted case management  
3 services for the mentally ill but limited to services  
4 provided in crisis intervention programs;

5 (o) inpatient psychiatric services for persons under 21  
6 years of age, as provided in 42 U.S.C. 1396d(h), in a  
7 residential treatment facility, as defined in 50-5-101, that  
8 is licensed in accordance with 50-5-201; and

9 (p) any additional medical service or aid allowable  
10 under or provided by the federal Social Security Act.

11 (4) The department may implement, as provided for in  
12 Title XIX of the federal Social Security Act (42 U.S.C.  
13 1396, et seq.), as may be amended, a program under medicaid  
14 for payment of medicare premiums, deductibles, and  
15 coinsurance for persons not otherwise eligible for medicaid.

16 (5) The department may set rates for medical and other  
17 services provided to recipients of medicaid and may enter  
18 into contracts for delivery of services to individual  
19 recipients or groups of recipients.

20 (6) The services provided under this part may be only  
21 those that are medically necessary and that are the most  
22 efficient and cost-effective.

23 (7) The amount, scope, and duration of services  
24 provided under this part must be determined by the  
25 department in accordance with Title XIX of the federal

1 Social Security Act (42 U.S.C. 1396, et seq.), as may be  
2 amended.

3 (8) Services, procedures, and items of an experimental  
4 or cosmetic nature may not be provided.

5 (9) If available funds are not sufficient to provide  
6 medical assistance for all eligible persons, the department  
7 may set priorities to limit, reduce, or otherwise curtail  
8 the amount, scope, or duration of the medical services made  
9 available under the Montana medicaid program.

10 (10) Community-based medicaid services, as provided for  
11 in part 4 of this chapter, must be provided in accordance  
12 with the provisions of this chapter and the rules adopted  
13 thereunder.

14 (11) Medicaid payment for personal-care facilities may  
15 not be made unless the department certifies to the director  
16 of the governor's office of budget and program planning that  
17 payment to this type of provider would, in the aggregate, be  
18 a cost-effective alternative to services otherwise  
19 provided."

20 **NEW SECTION. Section 7. Applicability.** "[THIS ACT]  
21 [SECTIONS 1 THROUGH 4] and the rules of the department of  
22 health and environmental sciences adopted pursuant to  
23 [sections 2 and 3] apply to licenses for personal care  
24 facilities issued or renewed after July 1, 1994.

25 **NEW SECTION. Section 8. Effective Dates.** "(1)

1 ~~{Sections 2, 3, 9, and this section} are effective on~~  
2 ~~passage and approval.~~  
3 ~~{2}--{Sections 1 and 4 through 8} are~~ (THIS ACT) IS  
4 effective July 1, 1994.

-End-