

SENATE BILL 50

Introduced by Waterman, et al.

12/09 Introduced
12/09 Referred to Finance & Claims
12/09 First Reading
12/10 Fiscal Note Requested
12/13 Hearing
12/14 Fiscal Note Received
12/14 Fiscal Note Printed
12/15 Committee Report--Bill Passed as Amended
12/15 2nd Reading Passed
12/15 3rd Reading Passed

Transmitted to House
12/16 First Reading
12/16 Referred to Appropriations
Died in Committee

1 SENATE BILL NO. 50
2 INTRODUCED BY Mignon Water Ddo
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING GUIDELINES
5 FOR ASSISTED LIVING FACILITIES; REQUIRING THE DEPARTMENT OF
6 HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE ASSISTED LIVING
7 FACILITIES; PROVIDING FOR EXEMPTION OF CERTAIN ACTS FROM THE
8 DEFINITIONS OF THE "PRACTICE OF PRACTICAL NURSING" AND THE
9 "PRACTICE OF PROFESSIONAL NURSING"; PROVIDING FOR CERTAIN
10 TAX EXEMPTIONS AND CREDITS; AMENDING SECTIONS 15-6-201,
11 15-30-128, 23-5-406, 33-32-102, 37-8-103, 50-4-102,
12 50-5-101, 50-5-301, 50-8-101, 50-10-101, 50-16-701,
13 50-51-102, 50-51-201, 50-78-103, 52-3-602, AND 52-3-803,
14 MCA; AND PROVIDING EFFECTIVE DATES."

15
16 STATEMENT OF INTENT

17 A statement of legislative intent is necessary for this
18 bill because [section 2(1)] requires the department of
19 health and environmental sciences to adopt rules concerning
20 assisted living facilities. A statement of legislative
21 intent is also required because [section 2(2)] requires the
22 adoption of rules by the board of nursing.

23 The legislature intends that the rules adopted by the
24 department include standards for licensing assisted living
25 facilities. The standards must include such matters as

1 staffing, fire protection, health and safety, food and
2 nutrition, environmental concerns, sanitation,
3 administration, admission policies, resident care plans,
4 staff training, medication, and health services.

5 The legislature intends that the rules adopted by the
6 board of nursing be adopted in close, frequent, and
7 meaningful consultation with the department of health and
8 environmental sciences. The legislature intends that the
9 rules list specific procedures that do not constitute either
10 the practice of practical nursing or the practice of
11 professional nursing. The legislature intends that the rules
12 list those procedures that employees of assisted living
13 facilities routinely use when helping residents to take
14 prescription or nonprescription medicines that, were it not
15 for infirmities resulting from age or medical condition,
16 would be self-administered by the residents.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 50-51-102, MCA, is amended to read:

20 "50-51-102. Definitions. Unless the context requires
21 otherwise, in this chapter the following definitions apply:

22 (1) "Assisted living facility" means a building in
23 which separate accommodations, including separate bath and
24 cooking facilities, are rented on a permanent or
25 semipermanent basis to residents who may need:

1 (a) professional nursing services provided by contract
2 or by the facility;

3 (b) personal assistance with daily living;

4 (c) other health care services; or

5 (d) support services.

6 †1†(2) "Board" means the board of health and
7 environmental sciences.

8 †2†(3) "Commercial establishment" means an
9 establishment operated primarily for profit.

10 †3†(4) "Department" means the department of health and
11 environmental sciences.

12 †4†(5) "Establishment" means a hotel, motel,
13 roominghouse, boardinghouse, retirement home, or tourist
14 home.

15 †5†(6) "Hotel" or "motel" includes a building or
16 structure kept, used, maintained as, advertised as, or held
17 out to the public to be a hotel, motel, inn, motor court,
18 tourist court, public lodginghouse, or place where sleeping
19 accommodations are furnished for a fee to transient guests,
20 with or without meals.

21 †6†(7) "Person" includes an individual, partnership,
22 corporation, association, county, municipality, cooperative
23 group, or other entity engaged in the business of operating,
24 owning, or offering the services of a hotel, motel,
25 boardinghouse, tourist home, retirement home, or

1 roominghouse.

2 †7†(8) "Roominghouse", "boardinghouse", or "retirement
3 home" means buildings in which separate sleeping rooms are
4 rented providing sleeping accommodations for three or more
5 persons on a weekly, semimonthly, monthly, or permanent
6 basis, whether or not meals or central kitchens are provided
7 but without separated cooking facilities or kitchens within
8 each room, and whose occupants do not need professional
9 nursing or personal-care services provided by the facility.

10 †8†(9) "Tourist home" means an establishment or
11 premises where sleeping accommodations are furnished to
12 transient guests for hire or rent on a daily or weekly
13 rental basis in a private home when the accommodations are
14 offered for hire or rent for the use of the traveling
15 public.

16 †9†(10) "Transient guest" means a guest for only a brief
17 stay, such as the traveling public."

18 **NEW SECTION. Section 2. Assisted living facilities --**
19 **licensing rules -- nursing exemption.** (1) The department
20 shall adopt rules regarding the licensing of assisted living
21 facilities.

22 (2) The board of nursing shall, in close consultation
23 and cooperation with the department, adopt rules providing
24 that certain actions of properly trained staff of an
25 assisted living facility licensed by the department do not

constitute the practice of practical nursing or the practice of professional nursing as defined in 37-8-102. The rules must include those actions that do not require knowledge of basic or advanced nursing procedure and that may be routinely undertaken to assist facility residents, such as the application of eye drops, nose drops, inhalants, and suppositories and assistance with the ingestion of other noninjectable prescription medications.

Section 3. Section 15-6-201, MCA, is amended to read:

"15-6-201. **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, for assisted living facilities, as defined in 50-51-102, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable

1 purposes;

2 (f) evidence of debt secured by mortgages of record
3 upon real or personal property in the state of Montana;

4 (g) public museums, art galleries, zoos, and
5 observatories not used or held for private or corporate
6 profit;

7 (h) all household goods and furniture, including but
8 not limited to clocks, musical instruments, sewing machines,
9 and wearing apparel of members of the family, used by the
10 owner for personal and domestic purposes or for furnishing
11 or equipping the family residence;

12 (i) a truck canopy cover or topper weighing less than
13 300 pounds and having no accommodations attached. This
14 property is also exempt from taxation under 61-3-504(2) and
15 61-3-537.

16 (j) a bicycle, as defined in 61-1-123, used by the
17 owner for personal transportation purposes;

18 (k) motor homes, travel trailers, and campers;

19 (l) all watercraft;

20 (m) motor vehicles, land, fixtures, buildings, and
21 improvements owned by a cooperative association or nonprofit
22 corporation organized to furnish potable water to its
23 members or customers for uses other than the irrigation of
24 agricultural land;

25 (n) the right of entry that is a property right

1 reserved in land or received by mesne conveyance (exclusive
2 of leasehold interests), devise, or succession to enter land
3 whose surface title is held by another to explore, prospect,
4 or dig for oil, gas, coal, or minerals;

5 (o) property owned and used by a corporation or
6 association organized and operated exclusively for the care
7 of the developmentally disabled, mentally ill, or
8 vocationally handicapped as defined in 18-5-101, which is
9 not operated for gain or profit, and property owned and used
10 by an organization owning and operating facilities for the
11 care of the retired, aged, or chronically ill, which are not
12 operated for gain or profit;

13 (p) all farm buildings with a market value of less than
14 \$500 and all agricultural implements and machinery with a
15 market value of less than \$100;

16 (q) property owned by a nonprofit corporation organized
17 to provide facilities primarily for training and practice
18 for or competition in international sports and athletic
19 events and not held or used for private or corporate gain or
20 profit. For purposes of this subsection (q), "nonprofit
21 corporation" means an organization exempt from taxation
22 under section 501(c) of the Internal Revenue Code and
23 incorporated and admitted under the Montana Nonprofit
24 Corporation Act.

25 (r) the first \$15,000 or less of market value of tools

1 owned by the taxpayer that are customarily hand-held and
2 that are used to:

3 (i) construct, repair, and maintain improvements to
4 real property; or

5 (ii) repair and maintain machinery, equipment,
6 appliances, or other personal property;

7 (s) harness, saddlery, and other tack equipment;

8 (t) a title plant owned by a title insurer or a title
9 insurance producer, as those terms are defined in 33-25-105;

10 (u) beginning January 1, 1994, timber as defined in
11 15-44-102; and

12 (v) all trailers and semitrailers with a licensed gross
13 weight of 26,000 pounds or more. For purposes of this
14 subsection (v), the terms "trailer" and "semitrailer" mean a
15 vehicle with or without motive power that is:

16 (i) designed and used only for carrying property;

17 (ii) designed and used to be drawn by a motor vehicle;
18 and

19 (iii) either constructed so that no part of its weight
20 rests upon the towing vehicle or constructed so that some
21 part of its weight and the weight of its load rests upon or
22 is carried by another vehicle.

23 (2) (a) The term "institutions of purely public
24 charity" includes any organization that meets the following
25 requirements:

1 (i) The organization qualifies as a tax-exempt
2 organization under the provisions of section 501(c)(3),
3 Internal Revenue Code, as amended.

4 (ii) The organization accomplishes its activities
5 through absolute gratuity or grants; however, the
6 organization may solicit or raise funds by the sale of
7 merchandise, memberships, or tickets to public performances
8 or entertainment or by other similar types of fundraising
9 activities.

10 (b) For the purposes of subsection (1)(g), the term
11 "public museums, art galleries, zoos, and observatories"
12 means governmental entities or nonprofit organizations whose
13 principal purpose is to hold property for public display or
14 for use as a museum, art gallery, zoo, or observatory. The
15 exempt property includes all real and personal property
16 reasonably necessary for use in connection with the public
17 display or observatory use. Unless the property is leased
18 for a profit to a governmental entity or nonprofit
19 organization by an individual or for-profit organization,
20 real and personal property owned by other persons is exempt
21 if it is:

22 (i) actually used by the governmental entity or
23 nonprofit organization as a part of its public display;

24 (ii) held for future display; or

25 (iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 4. Section 15-30-128, MCA, is amended to read:

"15-30-128. Credit for expense of caring for certain elderly family members. (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married individual for the taxable year.

(3) For purposes of this section, "family income"

means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services, care in assisted living facilities, as defined in 50-51-102, and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, homemaker services, adult day care, respite care, or health care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) premiums paid for long-term care insurance coverage for a qualifying family member.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed \$25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds \$25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each \$2,000 or fraction thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds \$25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by \$1 for each dollar of the adjusted gross income over \$50,000 for a taxpayer whose adjusted gross income exceeds \$50,000;

(b) limited to \$5,000 per qualifying family member in a taxable year and to \$10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a

separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections."

Section 5. Section 23-5-406, MCA, is amended to read:

"23-5-406. Exempt charitable organizations and facilities. (1) (a) An organization granted an exemption under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

(i) on or before January 15, 1989, is exempt from taxation and the permit fee imposed by this part;

(ii) after January 15, 1989, is exempt from taxation and one-half the permit fee imposed by this part if the organization carries on gambling activities for no more than 60 days a calendar year.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

(iii) apply to the department for a permit to conduct charitable live bingo or keno games.

(2) A long-term care facility, as defined in 50-5-101,

1 an assisted living facility, as defined in 50-51-102, or a
 2 retirement home, as defined in subsection (4) of this
 3 section, that has obtained an operator's license and a
 4 permit from the department to operate live bingo or keno is
 5 exempt from taxation and the permit fee imposed by this part
 6 if the facility:

7 (a) limits participation in live bingo and keno games
 8 to persons using the facility and their guests;

9 (b) limits live bingo or keno activities to its main
 10 premises or place of operation; and

11 (c) complies with other statutes and rules relating to
 12 the operation of live bingo and keno.

13 (3) The department may revoke or suspend the permit of
 14 an organization or a facility provided for in subsection (1)
 15 or (2) if, after investigation, the department determines
 16 that the organization or facility is operating or has
 17 contracted with a nonqualified organization that is
 18 operating live bingo or keno in a predominantly commercial
 19 manner.

20 (4) For purposes of this section, "retirement home"
 21 means a building in which sleeping rooms without cooking
 22 facilities in each room are rented to three or more persons
 23 who are 60 years of age or older and who do not need skilled
 24 nursing care, intermediate nursing care, or personal nursing
 25 care, as defined in 50-5-101."

1 **Section 6.** Section 33-32-102, MCA, is amended to read:

2 "33-32-102. Definitions. As used in this chapter, the
 3 following definitions apply:

4 (1) "Commissioner" means the commissioner of insurance
 5 provided for in 2-15-1903.

6 (2) "Health care provider" means a person, corporation,
 7 facility, or institution licensed by the state to provide or
 8 otherwise lawfully providing health care services, including
 9 but not limited to:

10 (a) a physician, health care facility as defined in
 11 50-5-101, osteopath, dentist, nurse, optometrist,
 12 chiropractor, podiatrist, physical therapist, psychologist,
 13 licensed social worker, speech pathologist, audiologist,
 14 certified chemical dependency counselor, or licensed
 15 professional counselor; and

16 (b) an assisted living facility as defined in
 17 50-51-102; and

18 ~~(b)(c)~~ an officer, employee, or agent of a person
 19 described in subsection (2)(a) acting in the course and
 20 scope of employment.

21 (3) "Health care services" means the health care and
 22 services provided by health care providers, including drugs,
 23 medicines, ambulance services, and other therapeutic and
 24 rehabilitative services and supplies.

25 (4) "Utilization review" means a system for review of

1 health care services for a patient to determine the
 2 necessity or appropriateness of services, whether that
 3 review is prospective, concurrent, or retrospective, when
 4 the review will be utilized directly or indirectly in order
 5 to determine whether the health care services will be paid,
 6 covered, or provided. Utilization review does not include
 7 routine claim administration or determination that does not
 8 include determinations of medical necessity or
 9 appropriateness."

10 **Section 7.** Section 37-8-103, MCA, is amended to read:

11 "37-8-103. **Exemptions -- limitations on authority**
 12 **conferred.** (1) ~~No--provisions-of-this-law~~ This chapter may
 13 not be construed as prohibiting:

14 (a) gratuitous nursing by friends or members of the
 15 family;

16 (b) incidental care of the sick by domestic servants or
 17 persons primarily employed as housekeepers;

18 (c) nursing assistance in the case of an emergency;

19 (d) the practice of nursing by students enrolled in
 20 approved nursing education programs;

21 (e) the practice of nursing in this state by any
 22 legally qualified nurse of another state whose engagement
 23 requires the nurse to accompany and care for a patient
 24 temporarily residing in this state during the period of one
 25 such engagement not to exceed 6 months in length, provided

1 that person does not represent to the public that the person
 2 is a nurse licensed to practice in this state;

3 (f) the practice of any legally qualified nurse of
 4 another state who is employed by the United States
 5 government or any bureau, division, or agency thereof while
 6 in the discharge of that nurse's official duties;

7 (g) nursing or care of the sick, with or without
 8 compensation, when done in connection with the practice of
 9 the religious tenets of any well-established religion or
 10 denomination by adherents thereof;

11 (h) nursing or care of a minor who is in the care of a
 12 licensed foster parent, to the same extent such that the
 13 care may be provided by a parent or guardian;

14 (i) the execution of a death sentence pursuant to
 15 46-19-103; and

16 (j) nursing tasks delegated by licensed nurses to
 17 unlicensed persons according to rules adopted by the board;
 18 and

19 (k) nursing or care of a resident of an assisted living
 20 facility that is provided in accordance with rules adopted
 21 by the board pursuant to [section 2].

22 (2) This chapter may not be construed as conferring any
 23 authority to practice medicine, surgery, or any combination
 24 thereof; to confer any authority to practice any of the
 25 healing arts prescribed by law to be practiced in the state

1 of Montana; or to permit any person to undertake the
2 treatment of disease by any of the methods employed in those
3 arts unless the licensee has been qualified under the
4 applicable law or laws licensing the practice of those
5 professions or healing arts in the state of Montana."

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

7 "50-8-101. **Definitions.** As used in this part, the
8 following definitions apply:

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

13 (2) "Facility" means:

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

16 (i) mental health transitional living facilities; and

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

20 (b) for the department of family services:

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

24 (ii) youth care facilities; and

25 (c) for the department of health and environmental

1 sciences:

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

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

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

11 (iv) personal care facilities; and

12 (v) assisted living facilities.

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

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

18 **Section 9.** Section 50-4-102, MCA, is amended to read:

19 "50-4-102. **Definitions.** For the purposes of this
20 chapter, the following definitions apply:

21 (1) "Authority" means the Montana health care authority
22 created by 50-4-201.

23 (2) "Board" means one of the regional health care
24 planning boards created pursuant to 50-4-401.

25 (3) "Certificate of public advantage" or "certificate"

means a written certificate issued by the authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101(19) and includes assisted living facilities as defined in 50-51-102. The term does not apply to a facility operated by religious groups relying solely on spiritual

means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 10. Section 50-5-101, MCA, is amended to read:

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

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

(2) "Adult day-care center" means a facility,

freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected 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 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 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 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 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 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 institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists or assisted living facilities as defined in 50-51-102. 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 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 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 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 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. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can

house three or more hospice patients.

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

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

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

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

(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 health care facility that it finds meets its

1 standards and requirements.

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

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

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

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

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

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

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

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

24 (b) either is located in a county with fewer than six
25 residents per square mile or is located more than 35 road

1 miles from the nearest hospital.

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

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

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

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

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

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

23 (36) "Person" means any individual, firm, partnership,
24 association, organization, agency, institution, corporation,
25 trust, estate, or governmental unit, whether organized for

1 profit or not.

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

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

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

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

25 (41) "Residential treatment facility" means a facility

operated for the primary purpose of providing residential psychiatric care to persons 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.

50-5-101. (Effective July 1, 1994) 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, 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 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 that plans or assists in planning for health care facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, 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 a 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, 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 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 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 all or a portion of an institution, building, or agency, 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 individual. The term does not include offices of private physicians or dentists or assisted living facilities as defined in 50-51-102. 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 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 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 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 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. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

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

1 subdefinitions:

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

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

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

11 (26) "Kidney treatment center" means a facility that
12 specializes in treatment of kidney diseases, including
13 freestanding hemodialysis units.

14 (27) (a) "Long-term care facility" means a facility or
15 part of a facility that provides skilled nursing care,
16 intermediate nursing care, or intermediate developmental
17 disability care to a total of two or more individuals or
18 that provides personal care. The term does not include adult
19 foster care licensed under 52-3-303, community homes for the
20 developmentally disabled licensed under 53-20-305, community
21 homes for individuals with severe disabilities licensed
22 under 52-4-203, youth care facilities licensed under
23 41-3-1142, hotels, motels, boardinghouses, roominghouses, or
24 similar accommodations providing for transients, students,
25 or individuals not requiring institutional health care, or

1 juvenile and adult correctional facilities operating under
2 the authority of the department of corrections and human
3 services.

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

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

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

17 (e) "Personal care" means the provision of services and
18 care for residents needing some assistance in performing the
19 activities of daily living.

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

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

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

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

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

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

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

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

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

1 beds.

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

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

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

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

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

21 (40) "Residential psychiatric care" means active
22 psychiatric treatment provided in a residential treatment
23 facility to psychiatrically impaired individuals with
24 persistent patterns of emotional, psychological, or
25 behavioral dysfunction of such severity as to require

1 24-hour supervised care to adequately treat or remedy the
2 individual's condition. Residential psychiatric care must be
3 individualized and designed to achieve the patient's
4 discharge to less restrictive levels of care at the earliest
5 possible time.

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

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

13 **Section 11.** Section 50-5-301, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

9 (i) the person submits the letter of intent required by
10 50-5-302(2); and

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

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

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

20 (h) the use of hospital beds to provide services to
21 patients or residents needing only skilled nursing care,
22 intermediate nursing care, or intermediate developmental
23 disability care, as those levels of care are defined in
24 50-5-101; or

25 (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, 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, residential treatment facility, or personal care
18 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; or

25 (iii) an assisted living facility as defined in

1 50-51-102.

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

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

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

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

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

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

12 50-5-301. (Effective July 1, 1994) When certificate of
13 need is required -- definitions. (1) Unless a person has
14 submitted an application for and is the holder of a
15 certificate of need granted by the department, the person
16 may not initiate any of the following:

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

1 essential to the acquisition, improvement, expansion, or
2 replacement of any plant or equipment with respect to which
3 an expenditure is made must be included in determining if
4 the expenditure exceeds the expenditure thresholds.

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

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

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

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

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

24 (d) the acquisition by any person of major medical
25 equipment, provided the acquisition would have required a

1 certificate of need pursuant to subsection (1)(a) or (1)(c)
2 if it had been made by or on behalf of a health care
3 facility;

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

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

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

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

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

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

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

1 treatment, or inpatient rehabilitation.

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

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

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

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

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

23 (iii) an assisted living facility as defined in
24 50-51-102.

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

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

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

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

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

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

Section 12. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of health and environmental sciences.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and

emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101 and includes an assisted living facility as defined in 50-51-102.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 13. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or

private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the comingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" means a health care facility as defined in 50-5-101 and includes an assisted living facility as defined in 50-51-102.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 14. Section 50-51-201, MCA, is amended to read:

"50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, boardinghouse, retirement home, assisted living facility, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, ~~where~~ when more than one of each type of establishment is operated on the same premises and under the same management, only one license is required ~~which--shall~~ that must enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where in which the establishment is located."

Section 15. Section 50-78-103, MCA, is amended to read:

"50-78-103. Applicability -- exemptions. (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair

1 areas;

2 (c) a food, drug, or cosmetic as defined in the Montana
3 Food, Drug, and Cosmetic Act, Title 50, chapter 31;

4 (d) a source of ionizing radiation that is an exempt or
5 generally licensed material or device, as defined and
6 described in rules adopted under 75-3-202 and implementing
7 75-3-104 and 75-3-202;

8 (e) the radiological properties of any source,
9 byproduct, or special nuclear material as defined in
10 sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic
11 Energy Act of 1954; or

12 (f) sealed containers of hazardous chemicals:

13 (i) during transportation or while in storage at
14 transportation terminals, so long as existing labels are not
15 removed or defaced and the employer complies with state and
16 federal regulations relating to the transportation of
17 hazardous chemicals; or

18 (ii) at a facility of a distributor, so long as existing
19 labels are not removed or defaced and the employer
20 distributes material safety data sheets as required under
21 50-78-203(1).

22 (2) Employers operating the following workplaces are in
23 compliance with this chapter if they retain and make
24 accessible to employees and, when applicable, to students,
25 all material safety data sheets received or, if no material

1 safety data sheet is received for a hazardous chemical, any
2 other information received on its hazards and safe handling
3 and if the provisions of 50-78-206, 50-78-301(2) through
4 (4), and 50-78-305 are met:

5 (a) a teaching, research, or testing laboratory,
6 including any associated storeroom;

7 (b) a clinical laboratory or health care facility as
8 defined in 50-5-101, including an assisted living facility
9 as defined in 50-51-102;

10 (c) a pharmacy as defined in 37-7-101; or

11 (d) an office of a physician, dentist, osteopath,
12 podiatrist, optometrist, or veterinarian licensed under
13 Title 37.

14 (3) The provisions of this chapter do not apply to any
15 hazardous chemical subject to the packaging and labeling
16 requirements imposed under the Federal Insecticide,
17 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
18 except that a chemical manufacturer producing ~~such~~
19 hazardous chemicals ~~must~~ shall comply with all provisions of
20 this chapter."

21 **Section 16.** Section 52-3-602, MCA, is amended to read:

22 **"52-3-602. Definitions.** In this part, the following
23 definitions apply:

24 (1) "Local ombudsman" means a person officially
25 designated by the long-term care ombudsman to act as ~~his~~ a

1 local representative.

2 (2) "Long-term care facility" means a facility or part
3 thereof of a facility that provides skilled nursing care,
4 intermediate nursing care, or personal care, as these terms
5 are defined in 50-5-101, and includes an assisted living
6 facility as defined in 50-51-102.

7 (3) "Long-term care ombudsman" means the individual
8 appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal
9 requirement that the state provide an advocate for residents
10 of long-term care facilities."

11 **Section 17.** Section 52-3-803, MCA, is amended to read:

12 "52-3-803. Definitions. As used in this part, the
13 following definitions apply:

14 (1) "Abuse" means the infliction of physical or mental
15 injury or the deprivation of food, shelter, clothing, or
16 services necessary to maintain the physical or mental health
17 of an older person or a developmentally disabled person
18 without lawful authority. A declaration made pursuant to
19 50-9-103 constitutes lawful authority.

20 (2) "Developmentally disabled person" means a person 18
21 years of age or older who is developmentally disabled as
22 defined in 53-20-102.

23 (3) "Exploitation" means the unreasonable use of an
24 older person or a developmentally disabled person, the
25 person's money, or the person's property to the advantage of

1 another by means of duress, menace, fraud, or undue
2 influence.

3 (4) "Incapacitated person" has the meaning given in
4 72-5-101.

5 (5) "Long-term care facility" means a facility defined
6 in 50-5-101 and includes an assisted living facility as
7 defined in 50-51-102.

8 (6) "Mental injury" means an identifiable and
9 substantial impairment of an older person's intellectual or
10 psychological functioning or well-being.

11 (7) "Neglect" means the failure of a guardian, employee
12 of a public or private residential institution, facility,
13 home, or agency, or any person legally responsible in a
14 residential setting for an older person's or a
15 developmentally disabled person's welfare to provide, to the
16 extent of legal responsibility, food, shelter, clothing, or
17 services necessary to maintain the physical or mental health
18 of the older person or the developmentally disabled person.

19 (8) "Older person" means a person who is at least 60
20 years of age. For purposes of prosecution under 52-3-825(2),
21 the person 60 years of age or older must be unable to
22 provide personal protection from abuse, sexual abuse,
23 neglect, or exploitation because of a mental or physical
24 impairment or because of frailties or dependencies brought
25 about by advanced age.

1 (9) "Physical injury" means death, permanent or
2 temporary disfigurement, or impairment of any bodily organ
3 or function.

4 (10) "Sexual abuse" means the commission of sexual
5 assault, sexual intercourse without consent, indecent
6 exposure, deviate sexual conduct, or incest, as described in
7 Title 45, chapter 5, part 5."

8 NEW SECTION. **Section 18.** Codification instruction.
9 [Section 2] is intended to be codified as an integral part
10 of Title 50, chapter 51, and the provisions of Title 50,
11 chapter 51, apply to [sections 2].

12 NEW SECTION. **Section 19.** Effective dates. (1)
13 [Sections 2 and 18 and this section] are effective on
14 passage and approval.

15 (2) [Sections 1 and 3 through 17] are effective July 1,
16 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0050, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act providing guidelines for assisted living facilities.

ASSUMPTIONS:

1. This legislation will provide benefits for assisted living and for traumatic brain injured persons requiring assisted living support.
2. One FTE will be needed by the Department of Social and Rehabilitation Services (SRS) to implement and staff this program. They will complete an application for a federal waiver to implement this program, draft rules, enroll assisted living providers, coordinate with the Department of Health and Environmental Sciences (DHES) on licensure, and perform reimbursement and regular program activities.
3. Data processing expenses and equipment for this FTE include a computer, desk, telephone, telephone line hookup, and computer network hookup.
4. This program will be implemented January 1, 1994 with benefits beginning July 1, 1994.
5. Assisted living benefits are projected to cost \$17,162 per person per fiscal year, and \$85,000 per person for traumatic brain injured persons. The appropriation for this program will provide benefits for approximately 20 traumatic brain injured clients and approximately 99 assisted living clients, assuming half of the benefits are spent for each population.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	0	0.50	0.50	0	1.00	1.00
Personal Services	\$ 0	\$ 16,435	\$ 16,435	\$ 0	\$ 32,870	\$ 32,870
Data Processing Expenditures	0	1,800	1,800	0	3,600	3,600
Equipment	0	4,000	4,000	0	0	0
Benefits	0	0	0	0	3,391,951	3,391,951
Total	\$ 0	\$ 22,235	\$ 22,235	\$ 0	\$3,428,421	\$3,428,421

Funding: (Note: This is a biennial appropriation contained in HB2.)

General Fund	\$ 0	\$1,000,000	\$1,000,000
Federal Fund	0	2,450,656	2,450,656
Total	\$ 0	\$3,450,656	\$3,450,656

Biennial
Appropriation

(Continued)

David Lewis 12.13
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mignon Waterman
MIGNON WATERMAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0050, as introduced

SB 50

TECHNICAL NOTES:

1. HB2 language states that this program is contingent upon passage of LC110, which is SB0039.
2. Amendments will be proposed which remove references to the licensing functions of DHES. An amendment will be proposed to HB2 which will authorize SRS, through an interagency agreement, to contract with DHES for licensure and monitoring functions of this program, which are not provided by SRS.

APPROVED BY COMM. ON
FINANCE AND CLAIMS

SENATE BILL NO. 50

INTRODUCED BY WATERMAN, COBB

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING GUIDELINES FOR ASSISTED LIVING FACILITIES; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE ASSISTED LIVING FACILITIES; ~~PROVIDING FOR EXEMPTION OF CERTAIN ACTS FROM THE DEFINITIONS OF THE "PRACTICE OF PRACTICAL NURSING" AND THE "PRACTICE OF PROFESSIONAL NURSING"~~ REQUIRING THE BOARD OF NURSING AND OTHER DEPARTMENTS TO COOPERATE IN ADOPTING RULES TO PROVIDE FOR THE DELEGATION OF CERTAIN NURSING TASKS IN AN ASSISTED LIVING FACILITY; PROVIDING FOR CERTAIN TAX EXEMPTIONS AND CREDITS; AMENDING SECTIONS 15-6-201, 15-30-128, 23-5-406, 33-32-102, 37-8-203, 50-4-102, 50-5-101, 50-5-301, 50-5-1103, 50-8-101, 50-10-101, 50-16-701, 50-51-102, 50-51-107, 50-51-201, 50-51-301, 50-78-103, 52-3-602, AND 52-3-803, MCA; AND PROVIDING EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of legislative intent is necessary for this bill because [section 2(1)] requires the department of health and environmental sciences to adopt rules concerning assisted living facilities. A statement of legislative intent is also required because [section 2(2)] requires the

adoption of rules by the board of nursing.

The legislature intends that the rules adopted by the department include standards for licensing assisted living facilities. The standards must include such matters as staffing, fire protection, health and safety, food and nutrition, environmental concerns, sanitation, administration, admission policies, resident care plans, staff training, medication, and health services. THE RULES MUST ALSO PROVIDE FOR MEASURES TO ENSURE THE PRIVACY OF FACILITY RESIDENTS AND THE DIGNITY OF RESIDENTS' SOCIAL LIFE.

The legislature intends that the rules adopted by the board of nursing be adopted in close, frequent, and meaningful consultation with the department of health and environmental sciences. The legislature intends that the ~~rules list specific procedures that do not constitute either the practice of practical nursing or the practice of professional nursing. The legislature intends that the rules list those procedures that employees of assisted living facilities routinely use when helping residents to take prescription or nonprescription medicines that, were it not for infirmities resulting from age or medical condition, would be self-administered by the residents~~ PROVIDE FOR THE DELEGATION PURSUANT TO 37-8-202(7) OF CERTAIN NURSING TASKS WITHIN ASSISTED LIVING FACILITIES.

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

Section 1. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Assisted living facility" means a building OR PART OF A BUILDING in which separate accommodations, including separate bath and cooking facilities, are rented on a permanent or semipermanent basis to residents who may need:

(a) professional nursing services provided by contract or by the facility;

(b) personal assistance with daily living;

(c) other health care services; or

(d) support services.

(2) "Board" means the board of health and environmental sciences.

(3) "Commercial establishment" means an establishment operated primarily for profit.

(4) "Department" means the department of health and environmental sciences.

(5) "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, ASSISTED LIVING FACILITY AS DEFINED IN THIS SECTION, or tourist home.

(6) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held

out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(7) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

(8) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(9) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(10) "Transient guest" means a guest for only a brief

stay, such as the traveling public."

NEW SECTION. Section 2. Assisted living facilities --
licensing rules ----nursing--exemption. (1) The department
shall adopt rules regarding the licensing of assisted living
facilities.

(2) The board of nursing shall~~in--close--consultation~~
~~and--cooperation--with--the--department, adopt rules providing~~
~~that--certain--actions--of--properly--trained--staff--of--an~~
~~assisted-living-facility-licensed-by-the-department--do--not~~
~~constitute-the-practice-of-practical-nursing-or-the-practice~~
~~of--professional--nursing--as-defined-in-37-8-102, The rules~~
~~must-include-those-actions-that-do-not-require-knowledge--of~~
~~basic--or--advanced--nursing--procedure--and--that--may--be~~
~~routinely-undertaken-to-assist-facility-residents,--such--as~~
~~the--application--of--eye--drops, nose-drops, inhalants, and~~
~~suppositories-and-assistance-with--the--ingestion--of--other~~
~~noninjectable--prescription--medications,~~ THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES, AND THE DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES SHALL COOPERATE TO ADOPT
RULES FOR THE DELEGATION PURSUANT TO 37-8-202(7) OF CERTAIN
NURSING TASKS WITHIN ASSISTED LIVING FACILITIES.

Section 3. Section 15-6-201, MCA, is amended to read:

"15-6-201. **Exempt** categories. (1) The following
categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the
state to tax property owned by the federal government or an
agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school
districts;

(iii) irrigation districts organized under the laws of
Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing
fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in
the buildings, owned by a church and used for actual
religious worship or for residences of the clergy, together
with adjacent land reasonably necessary for convenient use
of the buildings;

(c) property used exclusively for agricultural and
horticultural societies, for educational purposes, for
assisted living facilities, as defined in 50-51-102, WHICH
ARE NONPROFIT, and for nonprofit health care facilities, as
defined in 50-5-101, licensed by the department of health
and environmental sciences and organized under Title 35,
chapter 2 or 3. A health care facility that is not licensed

by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than

300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) beginning January 1, 1994, timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross

weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose

principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 4. Section 15-30-128, MCA, is amended to read:

"15-30-128. Credit for expense of caring for certain

elderly family members. (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 65 years of age; or

(ii) has been determined to be disabled by the social security administration; and

(c) has a family income of \$15,000 or less for an unmarried individual and \$30,000 or less for a married individual for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the gross income, including all nontaxable income, of the individual or, in the case of a married individual, the gross income, including all nontaxable income, of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services, personal care attendant services, care in assisted living facilities, as defined in 50-51-102, and care in a long-term health care facility, as defined in 50-5-101, that is licensed by the department of health and environmental sciences, homemaker services, adult day care, respite care,

1 or health care equipment and supplies:

- 2 (i) provided to the qualifying family member;
- 3 (ii) provided by an organization or individual not
- 4 related to the taxpayer or the qualifying family member; and
- 5 (iii) not compensated for by insurance or otherwise;
- 6 (b) premiums paid for long-term care insurance coverage
- 7 for a qualifying family member.

8 (5) The percentage amount of credit allowable under
9 this section is:

10 (a) for a taxpayer whose adjusted gross income does not
11 exceed \$25,000, 30% of qualified elderly care expenses; or

12 (b) for a taxpayer whose adjusted gross income exceeds
13 \$25,000, the greater of:

- 14 (i) 20% of qualified elderly care expenses; or
- 15 (ii) 30% of qualified elderly care expenses, less 1% for
- 16 each \$2,000 or fraction thereof by which the adjusted gross
- 17 income of the taxpayer for the taxable year exceeds \$25,000.

18 (6) The dollar amount of credit allowable under this
19 section is:

20 (a) reduced by \$1 for each dollar of the adjusted gross
21 income over \$50,000 for a taxpayer whose adjusted gross
22 income exceeds \$50,000;

23 (b) limited to \$5,000 per qualifying family member in a
24 taxable year and to \$10,000 total for two or more family
25 members in a taxable year;

1 (c) prorated among multiple taxpayers who each
2 contribute to qualified elderly care expenses of the same
3 qualified family member in a taxable year in the same
4 proportion that their contributions bear to the total
5 qualified elderly care expenses paid by those taxpayers for
6 that qualified family member.

7 (7) A deduction or credit is not allowed under any
8 other provision of this chapter with respect to any amount
9 for which a credit is allowed under this section. The credit
10 allowed under this section may not be claimed as a carryback
11 or carryforward and may not be refunded if the taxpayer has
12 no tax liability.

13 (8) In the case of a married individual filing a
14 separate return, the percentage amount of credit under
15 subsection (5) and the dollar amount of credit under
16 subsection (6) are limited to one-half of the figures
17 indicated in those subsections."

18 **Section 5.** Section 23-5-406, MCA, is amended to read:

19 **"23-5-406. Exempt charitable organizations and**
20 **facilities.** (1) (a) An organization granted an exemption
21 under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

22 (i) on or before January 15, 1989, is exempt from
23 taxation and the permit fee imposed by this part;

24 (ii) after January 15, 1989, is exempt from taxation and
25 one-half the permit fee imposed by this part if the

organization carries on gambling activities for no more than 60 days a calendar year.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

(iii) apply to the department for a permit to conduct charitable live bingo or keno games.

(2) A long-term care facility, as defined in 50-5-101, an assisted living facility, as defined in 50-51-102, or a retirement home, as defined in subsection (4) of this section, that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno games to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of an organization or a facility provided for in subsection (1) or (2) if, after investigation, the department determines that the organization or facility is operating or has contracted with a nonqualified organization that is operating live bingo or keno in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101."

Section 6. Section 33-32-102, MCA, is amended to read:

"33-32-102. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(2) "Health care provider" means a person, corporation, facility, or institution licensed by the state to provide or otherwise lawfully providing health care services, including but not limited to:

(a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist, psychologist,

1 licensed social worker, speech pathologist, audiologist,
2 certified chemical dependency counselor, or licensed
3 professional counselor; and

4 (b) an assisted living facility as defined in
5 50-51-102; and

6 ~~(b)~~(c) an officer, employee, or agent of a person
7 described in subsection (2)(a) acting in the course and
8 scope of employment.

9 (3) "Health care services" means the health care and
10 services provided by health care providers, including drugs,
11 medicines, ambulance services, and other therapeutic and
12 rehabilitative services and supplies.

13 (4) "Utilization review" means a system for review of
14 health care services for a patient to determine the
15 necessity or appropriateness of services, whether that
16 review is prospective, concurrent, or retrospective, when
17 the review will be utilized directly or indirectly in order
18 to determine whether the health care services will be paid,
19 covered, or provided. Utilization review does not include
20 routine claim administration or determination that does not
21 include determinations of medical necessity or
22 appropriateness."

23 **Section 7.** ~~Section 37-8-103, MCA, is amended to read:~~

24 ~~"37-8-103. Exemptions-----limitations--on--authority~~
25 ~~conferred;--(1)--No provisions of this law~~ This chapter may

1 not be construed as prohibiting:

2 ~~(a)--gratuitous--nursing--by--friends--or--members--of--the~~
3 ~~family;~~

4 ~~(b)--incidental--care--of--the--sick--by--domestic--servants--or~~
5 ~~persons--primarily--employed--as--housekeepers;~~

6 ~~(c)--nursing--assistance--in--the--case--of--an--emergency;~~

7 ~~(d)--the--practice--of--nursing--by--students--enrolled--in~~
8 ~~approved--nursing--education--programs;~~

9 ~~(e)--the--practice--of--nursing--in--this--state--by--any~~
10 ~~legally--qualified--nurse--of--another--state--whose--engagement~~
11 ~~requires--the--nurse--to--accompany--and--care--for--a--patient~~
12 ~~temporarily--residing--in--this--state--during--the--period--of--one~~
13 ~~such--engagement--not--to--exceed--6--months--in--length;--provided~~
14 ~~that--person--does--not--represent--to--the--public--that--the--person~~
15 ~~is--a--nurse--licensed--to--practice--in--this--state;~~

16 ~~(f)--the--practice--of--any--legally--qualified--nurse--of~~
17 ~~another--state--who--is--employed--by--the--United--States~~
18 ~~government--or--any--bureau,--division,--or--agency--thereof--while~~
19 ~~in--the--discharge--of--that--nurse's--official--duties;~~

20 ~~(g)--nursing--or--care--of--the--sick,--with--or--without~~
21 ~~compensation,--when--done--in--connection--with--the--practice--of~~
22 ~~the--religious--tenets--of--any--well--established--religion--or~~
23 ~~denomination--by--adherents--thereof;~~

24 ~~(h)--nursing--or--care--of--a--minor--who--is--in--the--care--of--a~~
25 ~~licensed--foster--parent,--to--the--same--extent--such~~ that--the

care-may-be-provided-by-a-parent-or-guardian;

(i)--the-execution--of--a--death--sentence--pursuant--to
46-19-103;-and

(j)--nursing--tasks--delegated--by--licensed--nurses--to
unlicensed--persons--according-to-rules-adopted-by-the-board;
and

(k)--nursing-or-care-of-a-resident-of-an-assisted-living
facility-that-is-provided-in-accordance-with-rules-adopted
by-the-board-pursuant-to-section-2-;

(2)--This-chapter-may-not-be-construed-as-conferring-any
authority--to-practice-medicine,-surgery,-or-any-combination
thereof;-to-confer-any-authority--to--practice--any--of--the
healing--arts-prescribed-by-law-to-be-practiced-in-the-state
of-Montana;-or--to--permit--any--person--to--undertake--the
treatment-of-disease-by-any-of-the-methods-employed-in-those
arts--unless--the--licensee--has--been--qualified--under-the
applicable-law-or--laws--licensing--the--practice--of--those
professions-or-healing-arts-in-the-state-of-Montana-"

Section 7. 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,
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; and

(v) assisted living 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 8. Section 50-4-102, MCA, is amended to read:

"50-4-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Authority" means the Montana health care authority created by 50-4-201.

(2) "Board" means one of the regional health care planning boards created pursuant to 50-4-401.

(3) "Certificate of public advantage" or "certificate" means a written certificate issued by the authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other

services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to 50-4-502.

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101(19) and includes assisted living facilities as defined in 50-51-102. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by 50-4-304.

(11) "Region" means one of the health care planning regions created pursuant to 50-4-401.

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by 50-4-301."

Section 9. Section 50-5-101, MCA, is amended to read:

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

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

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

(3) "Affected 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 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 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

1 subject to 50-5-301.

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

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

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

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

1 requirements.

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

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

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

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

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

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

1 rehabilitative, or preventive care to any person or persons.
 2 The term does not include offices of private physicians or
 3 dentists or assisted living facilities as defined in
 4 50-51-102. The term includes but is not limited to
 5 ambulatory surgical facilities, health maintenance
 6 organizations, home health agencies, hospices, hospitals,
 7 infirmaries, kidney treatment centers, long-term care
 8 facilities, medical assistance facilities, mental health
 9 centers, outpatient facilities, public health centers,
 10 rehabilitation facilities, residential treatment facilities,
 11 and adult day-care centers.

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

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

25 (22) "Hospice" means a coordinated program of home and

1 inpatient health care that provides or coordinates
 2 palliative and supportive care to meet the needs of a
 3 terminally ill patient and the patient's family arising out
 4 of physical, psychological, spiritual, social, and economic
 5 stresses experienced during the final stages of illness and
 6 dying and that includes formal bereavement programs as an
 7 essential component. The term includes:

8 (a) an inpatient hospice facility, which is a facility
 9 managed directly by a medicare-certified hospice that meets
 10 all medicare certification regulations for freestanding
 11 inpatient hospice facilities; and

12 (b) a residential hospice facility, which is a facility
 13 managed directly by a licensed hospice program that can
 14 house three or more hospice patients.

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

1 retarded, and tubercular patients.

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

6 (a) an "infirmery--A" provides outpatient and inpatient
7 care;

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

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

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

18 (27) (a) "Long-term care facility" means a facility or
19 part thereof--which of a facility that provides skilled
20 nursing care, intermediate nursing care, or intermediate
21 developmental disability care to a total of two or more
22 persons or personal care to more than four persons who are
23 not related to the owner or administrator by blood or
24 marriage. The term does not include adult foster care
25 licensed under 52-3-303, community homes for the

1 developmentally disabled licensed under 53-20-305, community
2 homes for persons with severe disabilities licensed under
3 52-4-203, youth care facilities licensed under 41-3-1142,
4 ASSISTED LIVING FACILITIES AS DEFINED IN 50-51-102, hotels,
5 motels, boardinghouses, roominghouses, or similar
6 accommodations providing for transients, students, or
7 persons not requiring institutional health care, or juvenile
8 and adult correctional facilities operating under the
9 authority of the department of corrections and human
10 services.

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

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

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

24 (e) "Personal care" means the provision of services and
25 care which do not require nursing skills to residents

1 needing some assistance in performing the activities of
2 daily living.

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

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

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

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

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

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

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

1 treatment.

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

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

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

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

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

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

1 the facility.

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

4 (40) "Residential psychiatric care" means active
5 psychiatric treatment provided in a residential treatment
6 facility to psychiatrically impaired individuals with
7 persistent patterns of emotional, psychological, or
8 behavioral dysfunction of such severity as to require
9 24-hour supervised care to adequately treat or remedy the
10 individual's condition. Residential psychiatric care must be
11 individualized and designed to achieve the patient's
12 discharge to less restrictive levels of care at the earliest
13 possible time.

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

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

21 50-5-101. (Effective July 1, 1994) Definitions. As used
22 in parts 1 through 4 of this chapter, unless the context
23 clearly indicates otherwise, the following definitions
24 apply:

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

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

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

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

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

21 (6) "Batching period" means a period, not exceeding 1
22 month, established by department rule during which letters
23 of intent to seek approval for new beds or major medical
24 equipment are accumulated pending further processing of all
25 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 a 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, 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 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 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,

1 part 21.

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

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

7 (19) "Health care facility" or "facility" means all or a
8 portion of an institution, building, or agency, private or
9 public, excluding federal facilities, whether organized for
10 profit or not, used, operated, or designed to provide health
11 services, medical treatment, or nursing, rehabilitative, or
12 preventive care to any individual. The term does not include
13 offices of private physicians or dentists or assisted living
14 facilities as defined in 50-51-102. The term includes but is
15 not limited to ambulatory surgical facilities, health
16 maintenance organizations, home health agencies, hospices,
17 hospitals, infirmaries, kidney treatment centers, long-term
18 care facilities, medical assistance facilities, mental
19 health centers, outpatient facilities, public health
20 centers, rehabilitation facilities, residential treatment
21 facilities, and adult day-care centers.

22 (20) "Health maintenance organization" means a public or
23 private organization that provides or arranges for health
24 care services to enrollees on a prepaid or other financial
25 basis, either directly through provider employees or through

1 contractual or other arrangements with a provider or group
2 of providers.

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

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

18 (a) an inpatient hospice facility, which is a facility
19 managed directly by a medicare-certified hospice that meets
20 all medicare certification regulations for freestanding
21 inpatient hospice facilities; and

22 (b) a residential hospice facility, which is a facility
23 managed directly by a licensed hospice program that can
24 house three or more hospice patients.

25 (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 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 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) "Infirmarium" 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 "infirmarium--A" provides outpatient and inpatient care;

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

(26) "Kidney treatment center" means a facility that

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

(27) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, ASSISTED LIVING FACILITIES AS DEFINED IN 50-51-102, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or 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

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 individuals with
6 related problems.

7 (e) "Personal care" means the provision of services and
8 care for residents needing some assistance in performing the
9 activities of daily living.

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

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

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

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

23 (30) "Mental health center" means a facility providing
24 services for the prevention or diagnosis of mental illness,
25 the care and treatment of mentally ill patients or the

1 rehabilitation of mentally ill individuals, or any
2 combination of these services.

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

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

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

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

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

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

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

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled 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 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 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 10. Section 50-5-301, MCA, is amended to read:

"50-5-301. (Temporary) When certificate of need is required -- definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he 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:

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

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

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

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

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

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

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

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

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

8 (g) the expansion of the geographical service area of 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, 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, residential treatment facility, or personal care
8 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; or

15 (iii) an assisted living facility as defined in
16 50-51-102.

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

21 (ii) The term does not include adult foster care,
22 licensed under 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; ASSISTED LIVING
2 FACILITIES AS DEFINED IN 50-51-102; hotels, motels,
3 boardinghouses, roominghouses, or similar accommodations
4 providing for transients, students, or persons not requiring
5 institutional health care; or juvenile and adult
6 correctional facilities operating under the authority of the
7 department of corrections and human services.

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

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

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

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

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

50-5-301. (Effective July 1, 1994) 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, 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 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 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 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 that is being replaced or 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.

(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. 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; or

(iii) an assisted living facility as defined in 50-51-102.

(b) (i) "Long-term care facility" means an entity 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 individuals.

(ii) The term does not include adult foster care, licensed under 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; ASSISTED LIVING

FACILITIES AS DEFINED IN 50-51-102; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or 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.

(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 11. SECTION 50-5-1103, MCA, IS AMENDED TO READ:

"50-5-1103. Definitions. In this part the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of health and environmental sciences.

(4) "Facility" or "long-term care facility" means a facility or part thereof licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care or an assisted living facility as defined in 50-51-102.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility."

Section 12. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

1 (1) "Attending physician" has the meaning provided in
 2 50-9-102.

3 (2) "Board" means the state board of medical examiners.

4 (3) "Department" means the department of health and
 5 environmental sciences.

6 (4) "DNR identification" means a standardized
 7 identification card, form, necklace, or bracelet of uniform
 8 size and design, approved by the department, that signifies
 9 that the possessor is a qualified patient, as defined in
 10 50-9-102, or that the possessor's attending physician has
 11 issued a do not resuscitate order for the possessor and has
 12 documented the grounds for the order in the possessor's
 13 medical file.

14 (5) "Do not resuscitate order" means a directive from a
 15 licensed physician that emergency life-sustaining procedures
 16 should not be administered to a particular person.

17 (6) "Do not resuscitate protocol" means a standardized
 18 method of procedure, approved by the board and adopted in
 19 the rules of the department, for the withholding of
 20 emergency life-sustaining procedures by physicians and
 21 emergency medical services personnel.

22 (7) "Emergency medical services personnel" has the
 23 meaning provided in 50-9-102.

24 (8) "Health care facility" has the meaning provided in
 25 50-5-101 and includes an assisted living facility as defined

1 in 50-51-102.

2 (9) "Life-sustaining procedure" means cardiopulmonary
 3 resuscitation or a component of cardiopulmonary
 4 resuscitation.

5 (10) "Physician" means a person licensed under Title 37,
 6 chapter 3, to practice medicine in this state."

7 **Section 13.** Section 50-16-701, MCA, is amended to read:
 8 **"50-16-701. Definitions.** As used in this part, the
 9 following definitions apply:

10 (1) "Airborne infectious disease" means an infectious
 11 disease transmitted from person to person by an aerosol,
 12 including but not limited to infectious tuberculosis.

13 (2) "Department" means the department of health and
 14 environmental sciences provided for in 2-15-2101.

15 (3) "Designated officer" means the emergency services
 16 organization's representative and the alternate whose names
 17 are on record with the department as the persons responsible
 18 for notifying the emergency services provider of exposure.

19 (4) "Emergency services provider" means a person
 20 employed by or acting as a volunteer with a public or
 21 private organization that provides emergency services to the
 22 public, including but not limited to a law enforcement
 23 officer, firefighter, emergency medical technician,
 24 paramedic, corrections officer, or ambulance service
 25 attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" means a health care facility as defined in 50-5-101 and includes an assisted living facility as defined in 50-51-102.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

SECTION 14. SECTION 50-51-107, MCA, IS AMENDED TO READ:

"50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1)

Hotels, motels, boardinghouses, roominghouses, or similar accommodations, not including assisted living facilities, may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for him in such facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and may require appropriate care or placement of such person if it is found that professional nursing services are needed."

Section 15. Section 50-51-201, MCA, is amended to read:

"50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, boardinghouse, retirement home, assisted living facility, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, ~~where~~ when more than one of each type of establishment is operated on the same premises and under the same management, only one license is required ~~which shall~~ that must enumerate on the certificate thereof

the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where in which the establishment is located."

SECTION 16. SECTION 50-51-301, MCA, IS AMENDED TO READ:

"50-51-301. Health officers to make investigations and inspections. State (1) Except as provided in subsection (2), state and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

(2) The department shall inspect assisted living facilities, as defined in 50-51-102, at least once a year."

Section 17. Section 50-78-103, MCA, is amended to read:

"50-78-103. Applicability -- exemptions. (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through

1 (4), and 50-78-305 are met:

2 (a) a teaching, research, or testing laboratory,
3 including any associated storeroom;

4 (b) a clinical laboratory or health care facility as
5 defined in 50-5-101, including an assisted living facility
6 as defined in 50-51-102;

7 (c) a pharmacy as defined in 37-7-101; or

8 (d) an office of a physician, dentist, osteopath,
9 podiatrist, optometrist, or veterinarian licensed under
10 Title 37.

11 (3) The provisions of this chapter do not apply to any
12 hazardous chemical subject to the packaging and labeling
13 requirements imposed under the Federal Insecticide,
14 Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq.,
15 except that a chemical manufacturer producing such
16 hazardous chemicals ~~must~~ shall comply with all provisions of
17 this chapter."

18 **Section 18.** Section 52-3-602, MCA, is amended to read:

19 "52-3-602. Definitions. In this part, the following
20 definitions apply:

21 (1) "Local ombudsman" means a person officially
22 designated by the long-term care ombudsman to act as his a
23 local representative.

24 (2) "Long-term care facility" means a facility or part
25 thereof of a facility that provides skilled nursing care,

1 intermediate nursing care, or personal care, as these terms
2 are defined in 50-5-101, and includes an assisted living
3 facility as defined in 50-51-102.

4 (3) "Long-term care ombudsman" means the individual
5 appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal
6 requirement that the state provide an advocate for residents
7 of long-term care facilities."

8 **Section 19.** Section 52-3-803, MCA, is amended to read:

9 "52-3-803. Definitions. As used in this part, the
10 following definitions apply:

11 (1) "Abuse" means the infliction of physical or mental
12 injury or the deprivation of food, shelter, clothing, or
13 services necessary to maintain the physical or mental health
14 of an older person or a developmentally disabled person
15 without lawful authority. A declaration made pursuant to
16 50-9-103 constitutes lawful authority.

17 (2) "Developmentally disabled person" means a person 18
18 years of age or older who is developmentally disabled as
19 defined in 53-20-102.

20 (3) "Exploitation" means the unreasonable use of an
21 older person or a developmentally disabled person, the
22 person's money, or the person's property to the advantage of
23 another by means of duress, menace, fraud, or undue
24 influence.

25 (4) "Incapacitated person" has the meaning given in

1 72-5-101.

2 (5) "Long-term care facility" means a facility defined
3 in 50-5-101 and includes an assisted living facility as
4 defined in 50-51-102.

5 (6) "Mental injury" means an identifiable and
6 substantial impairment of an older person's intellectual or
7 psychological functioning or well-being.

8 (7) "Neglect" means the failure of a guardian, employee
9 of a public or private residential institution, facility,
10 home, or agency, or any person legally responsible in a
11 residential setting for an older person's or a
12 developmentally disabled person's welfare to provide, to the
13 extent of legal responsibility, food, shelter, clothing, or
14 services necessary to maintain the physical or mental health
15 of the older person or the developmentally disabled person.

16 (8) "Older person" means a person who is at least 60
17 years of age. For purposes of prosecution under 52-3-825(2),
18 the person 60 years of age or older must be unable to
19 provide personal protection from abuse, sexual abuse,
20 neglect, or exploitation because of a mental or physical
21 impairment or because of frailties or dependencies brought
22 about by advanced age.

23 (9) "Physical injury" means death, permanent or
24 temporary disfigurement, or impairment of any bodily organ
25 or function.

1 (10) "Sexual abuse" means the commission of sexual
2 assault, sexual intercourse without consent, indecent
3 exposure, deviate sexual conduct, or incest, as described in
4 Title 45, chapter 5, part 5."

5 NEW SECTION. **Section 20.** Codification instruction.
6 [Section 2] is intended to be codified as an integral part
7 of Title 50, chapter 51, and the provisions of Title 50,
8 chapter 51, apply to [sections 2].

9 NEW SECTION. **Section 21.** Effective dates. (1)
10 [Sections 2 and ~~18~~ 20 and this section] are effective on
11 passage and approval.

12 (2) [Sections 1 and 3 through ~~17~~ 19] are effective July
13 1, 1994.

-End-

SENATE BILL NO. 50

INTRODUCED BY WATERMAN, COBB

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING GUIDELINES
FOR ASSISTED LIVING FACILITIES; REQUIRING THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE ASSISTED LIVING
FACILITIES; ~~PROVIDING FOR EXEMPTION OF CERTAIN ACTS FROM THE~~
~~DEFINITIONS OF THE "PRACTICE OF PRACTICAL NURSING" AND THE~~
~~"PRACTICE OF PROFESSIONAL NURSING"~~ REQUIRING THE BOARD OF
NURSING AND OTHER DEPARTMENTS TO COOPERATE IN ADOPTING RULES
TO PROVIDE FOR THE DELEGATION OF CERTAIN NURSING TASKS IN AN
ASSISTED LIVING FACILITY; PROVIDING FOR CERTAIN TAX
EXEMPTIONS AND CREDITS; AMENDING SECTIONS 15-6-201,
15-30-128, 23-5-406, 33-32-102, ~~37-8-103~~ 50-4-102,
50-5-101, 50-5-301, 50-5-1103, 50-8-101, 50-10-101,
50-16-701, 50-51-102, 50-51-107, 50-51-201, 50-51-301,
50-78-103, 52-3-602, AND 52-3-803, MCA; AND PROVIDING
EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of legislative intent is necessary for this
bill because [section 2(1)] requires the department of
health and environmental sciences to adopt rules concerning
assisted living facilities. A statement of legislative
intent is also required because [section 2(2)] requires the

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.