House BILL NO. 109

INTRODUCED BY Cobb

A BILL FOR AN ACT ENTITLED: "AN ACT PLACING A 3-YEAR MORATORIUM ON THE APPROVAL OF ADDITIONAL LONG-TERM CARE FACILITY BEDS BY THE CERTIFICATE OF NEED PROCESS; AMENDING SECTION 50-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

"**50-5-301. When certificate of need ~~is~~ required -- definitions.** (1) ~~Unless~~ Subject to [section 2], 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~~ a 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 that 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~~ a person of major medical equipment, provided that 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~~ a 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 on which new or relocated beds are licensed pursuant to part 2 of this chapter and the date on which 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.

(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; 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~~ <u>a</u> 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."

<u>NEW SECTION.</u> **Section 2. Moratorium on certification of additional long-term care beds.** For 3 years beginning on [the effective date of this act], a person may not be granted a certificate of need for any change in long-term care bed capacity for a long-term care facility through:

(1) an increase in the number of beds for an existing facility;

(2) an increase in the number of beds for a portion of an existing facility;

(3) a relocation of beds from one health care facility or site to another; or

(4) a new facility.

<u>NEW SECTION.</u> **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, part 3, apply to [section 2].

NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to applications pending on [the effective date of this act].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0109 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill to impose a three year moratorium on the approval of additional long-term care facility beds through the certificate of need process.

ASSUMPTIONS:
1. The Executive Budget present law base contains funding for Medicaid reimbursement at long-term care facilities within the Department of Social and Rehabilitation Services (SRS) and the Department of Corrections and Human Services (DCHS) budgets. This level of funding serves as the base for calculating any costs or savings related to this bill.
2. The total number of available long-term beds in the state will be 2,475,430 in FY96, including Medicaid reimbursed and private pay patients, and will remain at that level through FY98.
3. The total number of long-term care beds utilized will be 2,275,167 in FY96, 2,298,237 in FY97, and 2,321,541 in FY98, based on an annual growth rate of 1.014% for FY97 and FY98. This growth rate is assumed to be the same for Medicaid and for private pay patient beds.
4. At this rate of growth, 100% occupancy statewide will not be reached during the three year life of this bill.
5. Medicaid utilization for long-term care will not be reduced until 100% occupancy of all beds is reached. Therefore, Medicaid will not realize a savings in long-term care due to this bill.
6. All other Certificate of Need (CON) requirements not addressed by this bill will remain.
7. The bill does not prohibit applications of CON for additional long-term care beds from being submitted. However, the executive anticipates fewer applications will be made, and fewer fees will be paid for review.
8. CON long-term care application fee revenues were $6,444 (FY91), $40,399 (FY92), $11,105 (FY93), and $5,490 (FY94). The average fee revenue for these four years is $15,860.
9. The Montana Health Care Authority (MHCA) will receive an application for added long-term care beds, and will deny the application under this proposed statute. The decision will be challenged in court. The MHCA will incur legal costs to respond to this challenge. However, at this time, the MHCA is unable to determine what the legal costs might be or when they would be incurred.
10. The bill does not prohibit facilities from adding long-term care beds as provided in 50-5-301(1)(b), MCA. (Please see Technical Notes, below.)
11. The Department of Family Services (DFS) does not anticipate additional people will become eligible for Supplemental Security Income (SSI) payments, above the increase already included in the Executive Budget, as a result of this bill.

(Continued)

Dave Lewis 1-15-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John Cobb

JOHN COBB, PRIMARY SPONSOR DATE

HB 109

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Expenditures:		
Operating Expenses	(15,860)	(15,860)
Funding:		
State Special CON fees (02)	(15,860)	(15,860)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. If the Governor's proposal to close the Eastmont Human Services Center (EHSC) is adopted, this bill would have an impact on the ability to use EHSC as a nursing home facility. Some private parties have expressed an interest in purchasing the EHSC facility for use as a nursing home. This bill would prohibit a purchaser from using the facility as a nursing home, since they could not obtain a CON for long-term care beds. In addition, any individuals or entities currently planning to build long-term care facilities in the state would not be able to obtain a CON. This may have some impact on the state and local economies and tax revenues, but estimating the impact is not possible at this time.
2. If growth rates are greater than anticipated and there becomes a "shortage" of nursing home beds, there could be an increase in referrals to state facilities such as the Montana Center for the Aged (CFA) and the Montana State Hospital (MSH). However, any referrals to the CFA or the MSH must meet the criteria for admittance. Generally, as demand for nursing home beds increases in relation to supply, there becomes less incentive for nursing home operators to serve patients with difficult behavior problems and more incentive to refer those people to state facilities if they are able. The size of this potential shift to state facilities cannot be estimated at this time.

TECHNICAL NOTES:

As provided in 50-5-301(1)(b), MCA, the state does not require a new or an additional CON for an increase in the number of beds or a relocation of beds from one facility or site to another if the number of beds involved is fewer than 10, 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. These beds are exempted from CON and would not be subject to the moratorium provided for in Section 2.