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SENATE BILL NO. 416

INTRODUCED BY

*Lawrence* *Bennett* *Joseph* *Kester*

BY REQUEST OF THE HUMAN SERVICES SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS

*Chip* *Ward* *Nelson*

COMMITTEE

*HARP* *Jacobson* *Dorey* *Back* *Frederick* *Stating*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATE OF NEED FOR HEALTH CARE FACILITIES; REMOVING BATCHING AND CHALLENGE PERIODS; REMOVING CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301, 50-5-302, 50-5-304, AND 50-5-306, MCA; REPEALING SECTIONS 50-4-311, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316, MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** 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.

1 (7) "Health care facility" means all facilities and institutions, whether public or private, proprietary  
2 or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated  
3 persons. The term includes all facilities and institutions included in the definition of health care facility in  
4 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely on spiritual  
5 means, through prayer, for healing.

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

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

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

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

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

17  
18 **Section 2.** Section 50-5-101, MCA, is amended to read:

19 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly  
20 indicates otherwise, the following definitions apply:

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

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

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

30 (4) "Ambulatory surgical facility" means a facility, ~~not part of a hospital~~, that provides surgical

1 treatment to patients not requiring hospitalization. This type of facility may include observation beds for  
2 patient recovery from surgery or other treatment.

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

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

8 ~~(7)(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.~~

9 ~~(8)(6) "Capital expenditure" means:~~

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

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

14 ~~(9)(7) "Certificate of need" means a written authorization by the department for a person to~~  
15 ~~proceed with a proposal subject to 50-5-301.~~

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

19 ~~(11)(8) "Chemical dependency facility" means a facility whose function is the treatment,~~  
20 ~~rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates~~  
21 ~~behavioral or health problems and endangers the health, interpersonal relationships, or economic function~~  
22 ~~of an individual or the public health, welfare, or safety.~~

23 ~~(12)(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical,~~  
24 ~~hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of~~  
25 ~~materials derived from the human body for the purpose of providing information for the diagnosis,~~  
26 ~~prevention, or treatment of any disease or assessment of a medical condition.~~

27 ~~(13)(10) "College of American pathologists" means the organization nationally recognized by that~~  
28 ~~name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests~~  
29 ~~and accredits clinical laboratories that it finds meet its standards and requirements.~~

30 ~~(14)(11) "Comparative review" means a joint review of two or more certificate of need applications~~

1 that are determined by the department to be competitive in that the granting of a certificate of need to one  
2 of the applicants would substantially prejudice the department's review of the other applications.

3 ~~(15)~~(12) "Construction" means the physical erection of a health care facility and any stage of the  
4 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health  
5 care facility.

6 ~~(16)~~(13) "Department" means the department of health and environmental sciences provided for  
7 in Title 2, chapter 15, part 21.

8 ~~(17)~~(14) "Federal acts" means federal statutes for the construction of health care facilities.

9 ~~(18)~~(15) "Governmental unit" means the state, a state agency, a county, municipality, or political  
10 subdivision of the state, or an agency of a political subdivision.

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

19 ~~(20)~~(17) "Health maintenance organization" means a public or private organization that provides  
20 or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through  
21 provider employees or through contractual or other arrangements with a provider or group of providers.

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

26 ~~(22)~~(19) "Hospice" means a coordinated program of home and inpatient health care that provides  
27 or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's  
28 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the  
29 final stages of illness and dying and that includes formal bereavement programs as an essential component.

30 The term includes:

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

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

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

12 ~~(24)~~(21) "Infirmiry" means a facility located in a university, college, government institution, or  
13 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

16 ~~(25)~~(22) "Joint commission on accreditation of hospitals" means the organization nationally  
17 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
18 requests and grants accreditation status to a health care facility that it finds meets its standards and  
19 requirements.

20 ~~(26)~~(23) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
21 including freestanding hemodialysis units.

22 ~~(27)~~(24) (a) "Long-term care facility" means a facility or part of a facility that provides skilled  
23 nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or  
24 more individuals or that provides personal care. The term does not include adult foster care licensed under  
25 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes  
26 for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under  
27 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for  
28 transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional  
29 facilities operating under the authority of the department of corrections and human services.

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

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

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

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

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

10 ~~(29)~~(25) "Major medical equipment" means a single unit of medical equipment or a single system  
11 of components with related functions which is used to provide medical or other health services and costs  
12 a substantial sum of money.

13 ~~(29)~~(26) "Medical assistance facility" means a facility that:

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

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

18 ~~(30)~~(27) "Mental health center" means a facility providing services for the prevention or diagnosis  
19 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
20 individuals, or any combination of these services.

21 ~~(31)~~(28) "Nonprofit health care facility" means a health care facility owned or operated by one or  
22 more nonprofit corporations or associations.

23 ~~(32)~~(29) "Observation bed" means a bed occupied ~~for not more than 6 hours~~ by a patient recovering  
24 from surgery or other treatment.

25 ~~(33)~~(30) "Offer" means the holding out by a health care facility that it can provide specific health  
26 services.

27 ~~(34)~~(31) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
28 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
29 of medical, surgical, or mental care. An outpatient facility may have observation beds.

30 ~~(35)~~(32) "Patient" means an individual obtaining services, including skilled nursing care, from a

1 health care facility.

2 ~~(36)~~(33) "Person" means any individual, firm, partnership, association, organization, agency,  
3 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

4 ~~(37)~~(34) "Public health center" means a publicly owned facility providing health services, including  
5 laboratories, clinics, and administrative offices.

6 ~~(38)~~(35) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
7 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
8 services, psychological and social services, or vocational evaluation and training or any combination of  
9 these services and in which the major portion of the services is furnished within the facility.

10 ~~(39)~~(36) "Resident" means an individual who is in a long-term care facility for intermediate or  
11 personal care.

12 ~~(40)~~(37) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
13 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
14 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
15 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
16 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

17 ~~(41)~~(38) "Residential treatment facility" means a facility operated for the primary purpose of  
18 providing residential psychiatric care to individuals under 21 years of age.

19 ~~(42)~~(39) "State health plan" means the plan prepared by the department to project the need for  
20 health care facilities within Montana and approved by the statewide health coordinating council and the  
21 governor."  
22

23 **Section 3.** Section 50-5-301, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

23 (c) "Obligation for capital expenditure" does not include the authorization of bond sales or the  
24 offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part  
25 4, and Title 18, chapter 2, part 1.

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

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

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

30 (5) This section may not be construed to require a health care facility to obtain a certificate of need

1 to undertake any activity that would be subject to a certificate of need if undertaken by a person other than  
 2 a health care facility."

3  
 4 **Section 4.** Section 50-5-302, MCA, is amended to read:

5 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules  
 6 including but not limited to rules for:

7 (a) the form and content of letters of intent and applications;

8 (b) the scheduling ~~and consolidation~~ of reviews;

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

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

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

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

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

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

16 ~~(e) the establishment of batching periods for certificate of need applications for new beds and~~  
 17 ~~major medical equipment, challenge periods, and the circumstances under which applications from different~~  
 18 ~~batches may be comparatively reviewed; and~~

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

22 (2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50%  
 23 or more of an existing health care facility, they shall submit to the department a letter noting intent to  
 24 acquire the facility and of the services to be offered in the facility and its bed capacity.

25 (3) Any person intending to initiate an activity for which a certificate of need is required shall  
 26 submit a letter of intent to the department.

27 (4) If the proposal is for new beds or major medical equipment, the department ~~shall place the letter~~  
 28 ~~of intent in the appropriate batch~~ may determine that the proposals should be comparatively reviewed  
 29 unless, in the case of beds, the proposal is determined to be exempt from review.

30 (5) Any person who desires comparative review with a proposal ~~in a batch~~ must submit a challenge

1 ~~letter of intent at least by the end of the challenge period following the batching period for that batch~~  
2 requesting comparative review.

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

6 (7) Within 20 working days after receipt of an application, the department shall determine whether  
7 it is complete and, if the application is found incomplete, shall send a written request to the applicant for  
8 the necessary additional information. Upon receipt of the additional information from the applicant, the  
9 department shall have an additional 15 working days to determine if the application is complete and to send  
10 a notice to the applicant that the application is complete or incomplete. ~~The request for added information~~  
11 ~~may be repeated as long as the information submitted remains incomplete, and the department shall have~~  
12 ~~15 working days after each submission to send a notice that the application is complete or incomplete.~~

13 (8) If a proposal is to undergo comparative review with another proposal but the applicant fails to  
14 submit the necessary additional information requested by the department by the deadline prescribed by  
15 department rules, the application ~~must be dropped from the current batch and assigned to the next batching~~  
16 period is considered withdrawn.

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

20 (10) ~~After an application is designated complete, immediate notification must be sent to the~~  
21 ~~applicant and all other affected persons regarding the department's projected time schedule for review of~~  
22 ~~the application.~~ The review period for an application may be no longer than 90 calendar days after the  
23 ~~notice is sent~~ application is initially received or, if a ~~challenging~~ the application has been submitted is to be  
24 comparatively reviewed as provided in subsection (5), within 90 days after ~~the notice has been sent for~~ all  
25 ~~such challenging~~ applications to be comparatively reviewed are received. A longer period is permitted with  
26 the consent of all affected applicants.

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

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

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

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

8  
 9 **Section 5.** Section 50-5-304, MCA, is amended to read:

10 "**50-5-304. Review criteria, required findings, and standards.** The department shall by rule  
 11 promulgate and ~~utilize~~ use, as appropriate, specific criteria for reviewing certificate of need applications  
 12 under this chapter, including but not limited to the following considerations and required findings:

13 (1) the degree to which the proposal being reviewed;

14 (a) demonstrates that the service is needed by the population within the service area defined in the  
 15 proposal;

16 (b) provides data that demonstrates the need for services contrary to the current state health plan,  
 17 including but not limited to waiting lists, projected service volumes, differences in cost and quality of  
 18 services, and availability of services; or

19 (c) is consistent with the current state health plan;

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

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

23 (4) the immediate and long-term financial feasibility of the proposal as well as the probable impact  
 24 of the proposal on the costs of and charges for providing health services by the person proposing the health  
 25 service;

26 (5) the relationship and financial impact of the services proposed to be provided to the existing  
 27 health care system of the area in which such services are proposed to be provided;

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

29 (7) the availability of resources, including health manpower, management personnel, and funds for  
 30 capital and operating needs, for the provision of services proposed to be provided and the availability of

1 alternative uses of ~~such~~ the resources for the provision of other health services;

2 (8) the relationship, including the organizational relationship, of the health services proposed to be  
3 provided to ancillary or support services;

4 (9) in the case of a construction project, the costs and methods of the proposed construction,  
5 including the costs and methods of energy provision, and the probable impact of the construction project  
6 reviewed on the costs of providing health services by the person proposing the construction project; ~~and~~

7 (10) the distance, convenience, cost of transportation, and accessibility of health services for  
8 persons who live outside urban areas in relation to the proposal; and

9 (11) in the case of a project to add long-term care facility beds:

10 (a) the need for the beds that takes into account the current and projected occupancy of long-term  
11 care beds in the community;

12 (b) the current and projected population over 65 years of age in the community; and

13 (c) other appropriate factors."

14

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

16 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request the department to  
17 reconsider its decision or hold a public hearing ~~and to reconsider its decision.~~ The request must specify  
18 all issues to be addressed by the department. The department shall grant the request if the affected person  
19 submits the request in writing and if the request is received by the department within 30 calendar days  
20 after the initial decision is announced.

21 (2) The public hearing ~~to reconsider~~ must be held within 30 calendar days after the request is  
22 received unless the requestor agrees to waive the time limit. In a case in which the department has  
23 approved an application for a certificate of need, only the person whose application has been approved may  
24 wave the time limit.

25 (3) The ~~reconsideration~~ hearing must be conducted pursuant to the contested case provisions ~~for~~  
26 ~~informal proceedings~~ of the Montana Administrative Procedure Act.

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

30 (5) Any adversely affected person who was a party to the hearing may appeal the department's

1 final decision to the district court as provided in Title 2, chapter 4, part 7.

2 ~~(6) If a petition to appeal the decision is filed, the decision must be stayed pending resolution of~~  
 3 ~~the appeal by the courts.~~ On application by a person whose proposal has been approved under the  
 4 procedure provided for in 50-5-302, a district court may order a person who requested a contested case  
 5 hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if  
 6 the court determines that the reasons for requesting the contested case hearing were frivolous.

7 (7) The department may by rule prescribe in greater detail the hearing and appellate procedures."  
 8

9 **Section 7.** Section 20-7-436, MCA, is amended to read:

10 **"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions  
 11 apply:

12 (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

13 (i) has the primary purpose of providing clinical care for children whose clinical diagnosis and  
 14 resulting treatment plan require in-house residential psychiatric care; and

15 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards  
 16 of the health care financing administration, or other comparable accreditation.

17 (b) The term does not include programs for children and youth that have the treatment of chemical  
 18 dependency as the primary reason for treatment.

19 (2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally  
 20 disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or  
 21 youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient  
 22 treatment of emotional problems.

23 (3) (a) "Residential treatment facility" means a facility in the state that:

24 (i) provides services for children with emotional disturbances;

25 (ii) operates for the primary purpose of providing residential psychiatric care to persons under 21  
 26 years of age;

27 (iii) is licensed by the department of health and environmental sciences; and

28 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing  
 29 psychiatric services to individuals under 21 years of age; ~~or~~

30 ~~(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate~~

1 ~~of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3,~~  
2 ~~prior to January 1, 1993.~~

3 (b) The term does not include programs for children and youth who have the treatment of chemical  
4 dependency as a primary reason for treatment."  
5

6 **Section 8.** Section 33-31-111, MCA, is amended to read:

7 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise  
8 provided in this chapter, the insurance or health service corporation laws do not apply to any health  
9 maintenance organization authorized to transact business under this chapter. This provision does not apply  
10 to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service  
11 corporation laws of this state except with respect to its health maintenance organization activities  
12 authorized and regulated pursuant to this chapter.

13 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority  
14 or its representatives may not be construed as a violation of any law relating to solicitation or advertising  
15 by health professionals.

16 (3) A health maintenance organization authorized under this chapter may not be considered to be  
17 practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

18 ~~(4) The provisions of this chapter do not exempt a health maintenance organization from the~~  
19 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~  
20

21 **Section 9.** Section 33-31-203, MCA, is amended to read:

22 **"33-31-203. Powers of insurers and health service corporations.** (1) An insurer authorized to  
23 transact insurance in this state or a health service corporation authorized to do business in this state may,  
24 either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization  
25 under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this  
26 section, two or more insurers, health service corporations, or subsidiaries or affiliates ~~thereof~~ of insurers  
27 or health service corporations may jointly organize and operate a health maintenance organization. The  
28 business of insurance is considered to include the provision of health care services by a health maintenance  
29 organization owned or operated by an insurer or a subsidiary ~~thereof~~ of an insurer.

30 (2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service

1 corporation may contract with a health maintenance organization to provide insurance or similar protection  
 2 against the cost of care provided through a health maintenance organization and to provide coverage if the  
 3 health maintenance organization fails to meet its obligations.

4 (3) The enrollees of a health maintenance organization constitute a permissible group under this  
 5 title. The insurer or health service corporation may make benefit payments to health maintenance  
 6 organizations for health care services rendered by providers under the contracts described in subsection  
 7 (2).

8 ~~(4) Nothing in this section exempts a health maintenance organization that provides health care~~  
 9 ~~services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts~~  
 10 ~~1 and 3."~~

11  
 12 **Section 10.** Section 33-31-221, MCA, is amended to read:

13 **"33-31-221. Powers of health maintenance organizations.** (1) The powers of a health  
 14 maintenance organization include but are not limited to the following:

15 (a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical  
 16 facility, or both, its ancillary equipment, and ~~such~~ property as may reasonably be required for its principal  
 17 office or for ~~such~~ purposes as may be necessary in the transaction of the business of the organization;

18 (b) the making of loans to a medical group under contract with it in furtherance of its program or  
 19 the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical  
 20 facility or hospital or in furtherance of a program providing health care services to enrollees;

21 (c) the furnishing of health care services through a provider who is under contract with or  
 22 employed by the health maintenance organization;

23 (d) the contracting with a person for the performance on its behalf of certain functions, such as  
 24 marketing, enrollment, and administration;

25 (e) the contracting with an insurer authorized to transact insurance in this state, or with a health  
 26 service corporation authorized to do business in this state, for the provision of insurance, indemnity, or  
 27 reimbursement against the cost of health care services provided by the health maintenance organization;  
 28 and

29 (f) the offering of other health care services in addition to basic health care services.

30 (2) A health maintenance organization shall file notice, with adequate supporting information, with



1 the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The  
 2 commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under  
 3 subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ the commissioner's opinion, it would substantially and  
 4 adversely affect the financial soundness of the health maintenance organization and endanger its ability to  
 5 meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement  
 6 of this subsection those activities having a de minimis effect. The commissioner may exempt certain  
 7 contracts from the filing requirement whenever exercise of the authority granted in this section would have  
 8 little or no effect on the health maintenance organization's financial condition and ability to meet  
 9 obligations.

10 ~~(3) Nothing in this section exempts the activities of a health maintenance organization from any~~  
 11 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~

12  
 13 **Section 11.** Section 50-4-102, MCA, is amended to read:

14 **"50-4-102. Definitions.** For the purposes of this chapter, the following definitions apply:

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

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

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

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

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

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

27 (7) "Health care facility" means all facilities and institutions, whether public or private, proprietary  
 28 or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated  
 29 persons. The term includes all facilities and institutions included in the definition of health care facility in  
 30 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely on spiritual

1 means, through prayer, for healing.

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

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

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

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

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

13

14 **Section 12.** Section 50-5-101, MCA, is amended to read:

15 **"50-5-101. Definitions.** As used in parts 1, 2, through and 4 of this chapter, unless the context  
16 clearly indicates otherwise, the following definitions apply:

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

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

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

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

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

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

4           ~~(7)~~(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

5           ~~(8) "Capital expenditure" means:~~

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

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

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

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

15           ~~(11)~~(6) "Chemical dependency facility" means a facility whose function is the treatment,  
16 rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates  
17 behavioral or health problems and endangers the health, interpersonal relationships, or economic function  
18 of an individual or the public health, welfare, or safety.

19           ~~(12)~~(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical,  
20 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of  
21 materials derived from the human body for the purpose of providing information for the diagnosis,  
22 prevention, or treatment of any disease or assessment of a medical condition.

23           ~~(13)~~(8) "College of American pathologists" means the organization nationally recognized by that  
24 name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests  
25 and accredits clinical laboratories that it finds meet its standards and requirements.

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

29           ~~(15)~~(9) "Construction" means the physical erection of a health care facility and any stage of the  
30 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health

1 care facility.

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

4 ~~(17)~~(11) "Federal acts" means federal statutes for the construction of health care facilities.

5 ~~(18)~~(12) "Governmental unit" means the state, a state agency, a county, municipality, or political  
6 subdivision of the state, or an agency of a political subdivision.

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

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

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

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

26 The term includes:

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

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

1           ~~(23)~~(17) "Hospital" means a facility providing, by or under the supervision of licensed physicians,  
2 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.  
3 Services provided may or may not include obstetrical care, emergency care, or any other service as allowed  
4 by state licensing authority. A hospital has an organized medical staff that is on call and available within  
5 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered  
6 nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally  
7 retarded, and tubercular patients.

8           ~~(24)~~(18) "Infirmiry" means a facility located in a university, college, government institution, or  
9 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

12           ~~(25)~~(19) "Joint commission on accreditation of hospitals" means the organization nationally  
13 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
14 requests and grants accreditation status to a health care facility that it finds meets its standards and  
15 requirements.

16           ~~(26)~~(20) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
17 including freestanding hemodialysis units.

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

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

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

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

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

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

9 ~~(29)~~(22) "Medical assistance facility" means a facility that:

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

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

14 ~~(30)~~(23) "Mental health center" means a facility providing services for the prevention or diagnosis  
15 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
16 individuals, or any combination of these services.

17 ~~(31)~~(24) "Nonprofit health care facility" means a health care facility owned or operated by one or  
18 more nonprofit corporations or associations.

19 ~~(32)~~(25) "Observation bed" means a bed occupied ~~for not more than 6 hours~~ by a patient recovering  
20 from surgery or other treatment.

21 ~~(33)~~(26) "Offer" means the holding out by a health care facility that it can provide specific health  
22 services.

23 ~~(34)~~(27) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
24 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
25 of medical, surgical, or mental care. An outpatient facility may have observation beds.

26 ~~(35)~~(28) "Patient" means an individual obtaining services, including skilled nursing care, from a  
27 health care facility.

28 ~~(36)~~(29) "Person" means any individual, firm, partnership, association, organization, agency,  
29 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

30 ~~(37)~~(30) "Public health center" means a publicly owned facility providing health services, including

1 laboratories, clinics, and administrative offices.

2 ~~(38)~~(31) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
3 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
4 services, psychological and social services, or vocational evaluation and training or any combination of  
5 these services and in which the major portion of the services is furnished within the facility.

6 ~~(39)~~(32) "Resident" means an individual who is in a long-term care facility for intermediate or  
7 personal care.

8 ~~(40)~~(33) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
9 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
10 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
11 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
12 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

13 ~~(41)~~(34) "Residential treatment facility" means a facility operated for the primary purpose of  
14 providing residential psychiatric care to individuals under 21 years of age.

15 ~~(42)~~(35) "State health plan" means the plan prepared by the department to project the need for  
16 health care facilities within Montana and approved by the statewide health coordinating council and the  
17 governor."  
18

19 **Section 13.** Section 50-5-207, MCA, is amended to read:

20 **"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.**

21 (1) The department may deny, suspend, or revoke a health care facility license if any of the following  
22 circumstances exist:

23 (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

24 (b) The staff is insufficient in number or unqualified by lack of training or experience.

25 (c) The applicant or any person managing it has been convicted of a felony and denial of a license  
26 on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits  
27 inimical to the health and safety of patients or residents.

28 (d) The applicant does not have the financial ability to operate the facility in accordance with law  
29 or rules or standards adopted by the department.

30 (e) There is cruelty or indifference affecting the welfare of the patients or residents.

1 (f) There is misappropriation of the property or funds of a patient or resident.

2 (g) There is conversion of the property of a patient or resident without the patient's or resident's  
3 consent.

4 (h) Any provision of parts 1 ~~through 3~~ and 2 is violated.

5 (2) The department may reduce a license to provisional status if as a result of an inspection it is  
6 determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed  
7 to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

8 ~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the  
9 certificate of need requirements of part 3.~~

10 ~~(4)(3)~~ The department may provide in its revocation order that the revocation will be in effect for  
11 up to 2 years. If this provision is appealed, it must be affirmed or reversed by the board or court."

12

13 NEW SECTION. **Section 14. Repealer.** Sections 50-4-311, 50-5-301, 50-5-302, 50-5-304,  
14 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, and 50-5-316, MCA, are repealed.

15

16 NEW SECTION. **Section 15. Contingent effective dates.** (1) Subject to subsection (2), [sections  
17 1 through 6] and this section are effective on passage and approval.

18 (2) If House Bill No. 2 does not contain personal services funding for the certificate of need  
19 program of at least \$240,000 for the ensuing biennium, then [sections 1 through 6] are void and [sections  
20 7 through 14] are effective July 1, 1995. If House Bill No. 2 contains personal services funding for the  
21 certificate of need program of at least \$240,000 for the ensuing biennium, then [sections 7 through 14]  
22 are void.

23

-END-



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0416, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing certificate of need for health care facilities; removing batching and challenge periods; removing certain functions from certificate of need; revising application, review, and appeal procedures; and contingently repealing the certificate of need program.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The Executive Budget present law base contains contain 2.00 FTE and \$86,753 general fund in FY96 (\$73,746 is contained in personal services) and \$87,015 general fund in FY97 (\$74,008 is contained in personal services) for the Certificate of Need (CON) program. A new proposal to add resources to fully support the CON program adds 1.00 FTE and \$100,909 general fund in FY96 (\$31,282 is in personal services) and \$101,019 general fund in FY97 (\$31,392 is in personal services) to the program. (The total program funding for the biennium is \$375,696 general fund. Total personal services funding for the biennium is \$210,428.)
3. Because of the contingent repealer, this fiscal note is written in two parts. The first part assumes that HB2 will contain at least \$240,000 in personal services funding during the 1997 biennium for the CON program. The fiscal impact section for the first part contains the new proposal personal services costs described in assumption #2 above, and an additional \$29,572 general fund during the biennium to bring the total personal services up to \$240,000. (The \$29,572 is split into \$15,000 general fund in FY96 and \$14,572 in FY97.) The second part assumes that HB2 will not contain at least \$240,000 in personal services funding during the 1997 biennium for the CON program.

Part 1

4. This portion of the fiscal note assumes that HB2 will contain at least \$240,000 in personal services funding for the CON program during the 1997 biennium. The portion of the bill impacted under this assumption will affect the cost of the Medicaid program in the nursing home area only.
5. There are currently unoccupied hospital beds that could be immediately converted to hospital swing beds. Swing beds are beds that can be used for nursing home eligible persons. For the purposes of this fiscal note, assume that 50 hospital beds will be converted to hospital swing beds by July 1, 1995. This increase by itself will not increase Medicaid costs directly. It is assumed that these additional beds would be filled with Medicare recipients recovering from hospital-based services and would require short-term stays that would be covered by Medicare.

The increase in hospital-based swing beds would increase the total number of beds available, and would subsequently decrease the overall occupancy of existing nursing home facilities. This will have the long-term impact of increasing the cost per day reimbursement for all Medicaid nursing home bed days in Montana. (See Long-Range Effects.)

(continued)

*Dave Lewis 3-1-95*  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

CHUCK SWYSGOOD, PRIMARY SPONSOR      DATE

Fiscal Note for SB0416, as introduced

*SB416*

(continued)

6. Additional nursing home beds will be added to existing facilities by July 1, 1996. This increase would not occur if the current CON process was in place. For the purposes of this fiscal note, assume that there will a 10% increase in nursing home beds, resulting in an additional 692 beds, of which 364 will be filled with persons eligible for Montana Medicaid (85% occupancy and 62% Medicaid-eligible persons). The current reimbursement is \$64.13 per person per day, resulting in additional costs of \$8,520,312 annually, beginning in FY97.
7. The federal matching rate for Medicaid services will be 31.00% general fund and 69.00% federal funds in FY97.

FISCAL IMPACT:

Part 1:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Personal Services	115,909	115,591
Benefits	<u>0</u>	<u>8,520,312</u>
Total Expenses	115,909	8,635,903

Funding:

General Fund (01)	115,909	2,756,888
Federal Fund (03)	<u>0</u>	<u>5,879,015</u>
Total Funds	115,909	8,635,903

Part 2

8. This portion of the fiscal note assumes the elimination of the CON process for health care facilities, as provided under the contingent repealer where HB2 does not contain at least \$240,000 in personal services funding during the 1997 biennium for the CON program. Under this scenario, parts of the bill will impact the cost of the Medicaid program in two different settings: nursing home beds and residential treatment facility beds.
9. The assumptions pertaining to nursing home beds and related costs are contained in assumptions #5 through #7 above.
10. There are currently unoccupied inpatient psychiatric beds in Montana. Montana Medicaid does not cover this service. Under the provisions of this bill, these beds could be converted to residential psychiatric beds and filled with persons eligible for Medicaid reimbursement. In addition, under this bill, existing residential treatment centers could expand the number of beds they have and new residential treatment centers could be developed, all without review as currently done under CON. Residential psychiatric services are a service covered under the Montana Medicaid program.

For the purposes of this fiscal note, assume that 25 additional residential treatment beds will become available, that are eligible for Medicaid reimbursement, by July 1, 1995, at the current rate of \$269.47 per child per day. This will result in additional costs of \$2,458,914 in both FY96 and FY97.

11. Managing Resources Montana (MRM) will be funded at the level recommended in the Executive Budget. (Please see Long Range Effects.)
12. The federal matching rate for Medicaid services will be 31.26% general fund and 69.74% federal funds in FY96 and 31.00% general fund and 69.00% federal funds in FY97.

(continued)

FISCAL IMPACT:

## Part 2:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Benefits	<u>2,458,914</u>	<u>10,979,226</u>
Total Expenses	2,458,914	10,979,226

Funding:

General Fund (01)	744,067	3,403,560
Federal Fund (03)	<u>1,714,847</u>	<u>7,575,666</u>
Total Funds	2,458,914	10,979,226

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If additional long-term care beds result in a surplus of beds in the state, the overall occupancy rate, now at 91%, will decline. Medicaid reimbursement is determined based on actual costs. If the overall occupancy rate drops in the state, the cost per day will increase as the cost of the unused beds are spread over the beds that are occupied. This will result in an increase to all recipients, including the Medicaid program. The nursing home reimbursement methodology establishes the FY95 reimbursement rate based on costs incurred in FY93. It is projected that there is a potential for the cost per nursing home day to increase for the Medicaid program beginning in FY99 because of unoccupied nursing home beds. For example, if the occupancy rate dropped from the current rate of 91% to 85% due to a 10% increase in available beds, the cost per day for Medicaid reimbursement would increase about \$1 per day for approximately 1.3 million bed days per year. The general fund cost would be approximately 30% of \$1,300,000, or \$390,000 per year.

MRM has a direct bearing on the growth of Medicaid reimbursement for residential treatment center services. MRM reviews all admissions for medical necessity and appropriateness of placement, to determine what level of service is appropriate for each child.

Additionally, MRM expands the continuum of services for children's psychiatric services to include less restrictive and less costly levels of care and treatment. If more community services and less restrictive environments are available to serve children (for whom these less intensive services are determined to be appropriate), less utilization of high end expensive services such as residential treatment will be necessary.

SENATE BILL NO. 416

INTRODUCED BY SWYSGOOD, BURNETT, LYNCH, KASTEN, CRIPPEN, FRANKLIN, DOHERTY, BECK,  
MOHL, T. NELSON, HARP, JACOBSON, FORRESTER, TVEIT, KEATING  
BY REQUEST OF THE HUMAN SERVICES SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS  
COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATE  
OF NEED FOR HEALTH CARE FACILITIES; REMOVING BATCHING AND CHALLENGE PERIODS; REMOVING  
CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL  
PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING  
SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301,  
50-5-302, 50-5-304, ~~AND 50-5-306~~, AND 50-5-310, MCA; REPEALING SECTIONS 50-4-311, 50-5-301,  
50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316,  
MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** 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.

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

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

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

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

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

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

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

18

19 **Section 2.** Section 50-5-101, MCA, is amended to read:

20 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly  
21 indicates otherwise, the following definitions apply:

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

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

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

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

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

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

9 ~~(7)~~(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

10 ~~(8)~~(6) "Capital expenditure" means:

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

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

15 ~~(9)~~(7) "Certificate of need" means a written authorization by the department for a person to  
16 proceed with a proposal subject to 50-5-301.

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

20 ~~(11)~~(8) "Chemical dependency facility" means a facility whose function is the treatment,  
21 rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates  
22 behavioral or health problems and endangers the health, interpersonal relationships, or economic function  
23 of an individual or the public health, welfare, or safety.

24 ~~(12)~~(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical,  
25 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of  
26 materials derived from the human body for the purpose of providing information for the diagnosis,  
27 prevention, or treatment of any disease or assessment of a medical condition.

28 ~~(13)~~(10) "College of American pathologists" means the organization nationally recognized by that  
29 name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests  
30 and accredits clinical laboratories that it finds meet its standards and requirements.

1           ~~(14)~~(11) "Comparative review" means a joint review of two or more certificate of need applications  
2 that are determined by the department to be competitive in that the granting of a certificate of need to one  
3 of the applicants would substantially prejudice the department's review of the other applications.

4           ~~(15)~~(12) "Construction" means the physical erection of a health care facility and any stage of the  
5 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health  
6 care facility.

7           ~~(16)~~(13) "Department" means the department of health and environmental sciences provided for  
8 in Title 2, chapter 15, part 21.

9           ~~(17)~~(14) "Federal acts" means federal statutes for the construction of health care facilities.

10          ~~(18)~~(15) "Governmental unit" means the state, a state agency, a county, municipality, or political  
11 subdivision of the state, or an agency of a political subdivision.

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

20          ~~(20)~~(17) "Health maintenance organization" means a public or private organization that provides  
21 or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through  
22 provider employees or through contractual or other arrangements with a provider or group of providers.

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

27          ~~(22)~~(19) "Hospice" means a coordinated program of home and inpatient health care that provides  
28 or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's  
29 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the  
30 final stages of illness and dying and that includes formal bereavement programs as an essential component.

1 The term includes:

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

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

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

13 ~~(24)~~(21) "Infirmity" means a facility located in a university, college, government institution, or  
14 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

17 ~~(25)~~(22) "Joint commission on accreditation of hospitals" means the organization nationally  
18 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
19 requests and grants accreditation status to a health care facility that it finds meets its standards and  
20 requirements.

21 ~~(26)~~(23) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
22 including freestanding hemodialysis units.

23 ~~(27)~~(24) (a) "Long-term care facility" means a facility or part of a facility that provides skilled  
24 nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or  
25 more individuals or that provides personal care. The term does not include adult foster care licensed under  
26 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes  
27 for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under  
28 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for  
29 transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional  
30 facilities operating under the authority of the department of corrections and human services.



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

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

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

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

11 ~~(28)~~(25) "Major medical equipment" means a single unit of medical equipment or a single system  
 12 of components with related functions which is used to provide medical or other health services and costs  
 13 a substantial sum of money.

14 ~~(29)~~(26) "Medical assistance facility" means a facility that:

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

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

19 ~~(30)~~(27) "Mental health center" means a facility providing services for the prevention or diagnosis  
 20 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
 21 individuals, or any combination of these services.

22 ~~(31)~~(28) "Nonprofit health care facility" means a health care facility owned or operated by one or  
 23 more nonprofit corporations or associations.

24 ~~(32)~~(29) "Observation bed" means a bed occupied ~~for not more than 6 hours~~ by a patient recovering  
 25 from surgery or other treatment.

26 ~~(33)~~(30) "Offer" means the holding out by a health care facility that it can provide specific health  
 27 services.

28 ~~(34)~~(31) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
 29 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
 30 of medical, surgical, or mental care. An outpatient facility may have observation beds.

1           ~~(35)~~(32) "Patient" means an individual obtaining services, including skilled nursing care, from a  
2 health care facility.

3           ~~(36)~~(33) "Person" means any individual, firm, partnership, association, organization, agency,  
4 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

5           ~~(37)~~(34) "Public health center" means a publicly owned facility providing health services, including  
6 laboratories, clinics, and administrative offices.

7           ~~(38)~~(35) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
8 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
9 services, psychological and social services, or vocational evaluation and training or any combination of  
10 these services and in which the major portion of the services is furnished within the facility.

11           ~~(39)~~(36) "Resident" means an individual who is in a long-term care facility for intermediate or  
12 personal care.

13           ~~(40)~~(37) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
14 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
15 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
16 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
17 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

18           ~~(41)~~(38) "Residential treatment facility" means a facility operated for the primary purpose of  
19 providing residential psychiatric care to individuals under 21 years of age.

20           ~~(42)~~(39) "State health plan" means the plan prepared by the department to project the need for  
21 health care facilities within Montana and approved by the statewide health coordinating council and the  
22 governor."

23

24           **Section 3.** Section 50-5-301, MCA, is amended to read:

25           **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted  
26 an application for and is the holder of a certificate of need granted by the department, the person may not  
27 initiate any of the following:

28           (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure,  
29 other than to acquire an existing health care facility or to replace major medical equipment with equipment  
30 performing substantially the same function and in the same manner, that exceeds the expenditure

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

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

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

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

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

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

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

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

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

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

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

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

28 (h) ~~the use of hospital beds to provide services to patients or residents needing only skilled nursing~~  
29 ~~care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are~~  
30 ~~defined in 50-5-101; or~~ THE USE OF HOSPITAL BEDS IN EXCESS OF FIVE TO PROVIDE SERVICES TO

1 PATIENTS OR RESIDENTS NEEDING ONLY SKILLED NURSING CARE, INTERMEDIATE NURSING CARE, OR  
 2 INTERMEDIATE DEVELOPMENTAL DISABILITY CARE, AS THOSE LEVELS OF CARE ARE DEFINED IN  
 3 50-5-101; OR

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

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

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

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

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

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

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

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

28 (c) "Obligation for capital expenditure" does not include the authorization of bond sales or the  
 29 offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part  
 30 4, and Title 18, chapter 2, part 1.

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

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

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

5 (5) This section may not be construed to require a health care facility to obtain a certificate of need  
6 to undertake any activity that would NOT be subject to a certificate of need if undertaken by a person other  
7 than a health care facility."

8  
9 **Section 4.** Section 50-5-302, MCA, is amended to read:

10 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules  
11 including but not limited to rules for:

12 (a) the form and content of letters of intent and applications;

13 (b) the scheduling ~~and consolidation~~ of reviews;

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

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

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

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

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

20 (d) the format of public informational hearings and reconsideration hearings; ~~and~~

21 ~~(e) the establishment of batching periods for certificate of need applications for new beds and~~  
22 ~~major medical equipment, challenge periods, and the circumstances under which applications from different~~  
23 ~~batches may be comparatively reviewed; and~~

24 ~~(f) the circumstances under which a certificate of need may be approved for the use of hospital~~  
25 ~~beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care~~  
26 ~~to patients or residents needing only that level of care; AND~~

27 (F) THE CIRCUMSTANCES UNDER WHICH A CERTIFICATE OF NEED MAY BE APPROVED FOR THE  
28 USE OF HOSPITAL BEDS IN EXCESS OF FIVE TO PROVIDE SKILLED NURSING CARE, INTERMEDIATE  
29 NURSING CARE, OR INTERMEDIATE DEVELOPMENTAL DISABILITY CARE TO PATIENTS OR RESIDENTS  
30 NEEDING ONLY THAT LEVEL OF CARE.

1 (2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50%  
2 or more of an existing health care facility, they shall submit to the department a letter noting intent to  
3 acquire the facility and of the services to be offered in the facility and its bed capacity.

4 (3) Any person intending to initiate an activity for which a certificate of need is required shall  
5 submit a letter of intent to the department.

6 (4) ~~If the proposal is for new beds or major medical equipment, the~~ THE department shall place the  
7 ~~letter of intent in the appropriate batch~~ may determine that the proposals should be comparatively reviewed  
8 WITH SIMILAR PROPOSALS unless, in the case of beds, the proposal is determined to be exempt from  
9 review.

10 (5) ~~Any~~ ON THE 10TH DAY OF EACH MONTH, THE DEPARTMENT SHALL PUBLISH IN A  
11 NEWSPAPER OF GENERAL CIRCULATION IN THE AREA TO BE SERVED BY THE PROPOSAL A  
12 DESCRIPTION OF EACH LETTER OF INTENT RECEIVED BY THE DEPARTMENT DURING THE PRECEDING  
13 CALENDAR MONTH. WITHIN 30 DAYS OF THE PUBLICATION, ANY person who desires comparative  
14 review with a proposal ~~in a batch~~ DESCRIBED IN THE PUBLICATION must submit a ~~challenge~~ letter of intent  
15 ~~at least by the end of the challenge period following the batching period for that batch~~ requesting  
16 comparative review.

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

20 (7) Within 20 working days after receipt of an application, the department shall determine whether  
21 it is complete and, if the application is found incomplete, shall send a written request to the applicant for  
22 the necessary additional information. Upon receipt of the additional information from the applicant, the  
23 department shall have an additional 15 working days to determine if the application is complete and to send  
24 a notice to the applicant that the application is complete or incomplete. ~~The request for added information~~  
25 ~~may be repeated as long as the information submitted remains incomplete, and the department shall have~~  
26 ~~15 working days after each submission to send a notice that the application is complete or incomplete.~~

27 (8) If a proposal is to undergo comparative review with another proposal but the applicant fails to  
28 submit the necessary additional information requested by the department by the deadline prescribed by  
29 department rules, the application ~~must be dropped from the current batch and assigned to the next batching~~  
30 ~~period~~ is considered withdrawn.

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

4 (10) ~~After an application is designated complete, immediate notification must be sent to the~~  
 5 ~~applicant and all other affected persons regarding the department's projected time schedule for review of~~  
 6 ~~the application.~~ The review period for an application may be no longer than 90 calendar days after the  
 7 notice is sent application is initially received or, if a challenging the application has been submitted is to be  
 8 comparatively reviewed as provided in subsection (5), within 90 days after ~~the notice has been sent for all~~  
 9 ~~such challenging applications to be comparatively reviewed are received.~~ A longer period is permitted with  
 10 the consent of all affected applicants.

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

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

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

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

22  
 23 **Section 5.** Section 50-5-304, MCA, is amended to read:

24 **"50-5-304. Review criteria, required findings, and standards.** The department shall by rule  
 25 promulgate and ~~utilize~~ use, as appropriate, specific criteria for reviewing certificate of need applications  
 26 under this chapter, including but not limited to the following considerations and required findings:

27 (1) the degree to which the proposal being reviewed;

28 (a) demonstrates that the service is needed by the population within the service area defined in the  
 29 proposal;

30 (b) provides data that demonstrates the need for services contrary to the current state health plan,

1 including but not limited to waiting lists, projected service volumes, differences in cost and quality of  
 2 services, and availability of services; or

3 (c) is consistent with the current state health plan;

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

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

7 (4) the immediate and long-term financial feasibility of the proposal as well as the probable impact  
 8 of the proposal on the costs of and charges for providing health services by the person proposing the health  
 9 service;

10 (5) the relationship and financial impact of the services proposed to be provided to the existing  
 11 health care system of the area in which such services are proposed to be provided;

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

13 (7) the availability of resources, including health manpower, management personnel, and funds for  
 14 capital and operating needs, for the provision of services proposed to be provided and the availability of  
 15 alternative uses of ~~such~~ the resources for the provision of other health services;

16 (8) the relationship, including the organizational relationship, of the health services proposed to be  
 17 provided to ancillary or support services;

18 (9) in the case of a construction project, the costs and methods of the proposed construction,  
 19 including the costs and methods of energy provision, and the probable impact of the construction project  
 20 reviewed on the costs of providing health services by the person proposing the construction project; ~~and~~

21 (10) the distance, convenience, cost of transportation, and accessibility of health services for  
 22 persons who live outside urban areas in relation to the proposal; and

23 (11) in the case of a project to add long-term care facility beds:

24 (a) the need for the beds that takes into account the current and projected occupancy of long-term  
 25 care beds in the community;

26 (b) the current and projected population over 65 years of age in the community; and

27 (c) other appropriate factors."

28  
 29 **Section 6.** Section 50-5-306, MCA, is amended to read:

30 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request ~~the department to~~



1 ~~reconsider its decision or hold a public hearing and to reconsider its decision. The request must specify~~  
 2 ~~all issues to be addressed by the department. The department shall grant the request if the affected person~~  
 3 ~~submits the request in writing and if the request is received by the department within 30 calendar days~~  
 4 ~~after the initial decision is announced. A CONTESTED CASE HEARING BEFORE THE DEPARTMENT UNDER~~  
 5 ~~THE PROVISIONS OF TITLE 2, CHAPTER 4, BY FILING A WRITTEN REQUEST WITH THE DEPARTMENT~~  
 6 ~~WITHIN 30 DAYS AFTER RECEIPT OF THE NOTIFICATION REQUIRED IN 50-5-302(13). THE WRITTEN~~  
 7 ~~REQUEST FOR A HEARING MUST INCLUDE:~~

8 (A) A STATEMENT DESCRIBING EACH FINDING AND CONCLUSION IN THE DEPARTMENT'S  
 9 INITIAL DECISION THAT WILL BE CONTESTED AT THE HEARING AND WHY EACH FINDING AND  
 10 CONCLUSION IS OBJECTIONABLE OR IN ERROR; AND

11 (B) A SUMMARY OF THE EVIDENCE THAT WILL BE SUBMITTED TO CONTEST THE FINDINGS AND  
 12 CONCLUSION IDENTIFIED IN SUBSECTION (1)(A).

13 (2) THE HEARING MUST BE LIMITED TO THE ISSUES IDENTIFIED UNDER SUBSECTION (1) AND  
 14 ANY OTHER ISSUES IDENTIFIED THROUGH DISCOVERY.

15 ~~(2)(3) The public hearing to reconsider must be held within 30 calendar days after the request is~~  
 16 ~~received unless the requestor agrees to waive the time limit. In a case in which the department has~~  
 17 ~~approved an application for a certificate of need, only the person whose application has been approved may~~  
 18 ~~waive the time limit. THE HEARINGS EXAMINER EXTENDS THE TIME LIMIT FOR GOOD CAUSE.~~

19 ~~(3) The reconsideration hearing must be conducted pursuant to the contested case provisions for~~  
 20 ~~informal proceedings of the Montana Administrative Procedure Act.~~

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

24 (5) Any adversely affected person who was a party to the hearing may appeal the department's  
 25 final decision to the district court as provided in Title 2, chapter 4, part 7.

26 (6) ~~If a petition to appeal the decision is filed, the decision must be stayed pending resolution of~~  
 27 ~~the appeal by the courts. On application by a person whose proposal has been approved under the~~  
 28 ~~procedure provided for in 50-5-302, a district court may order a person who requested a contested case~~  
 29 ~~hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if~~  
 30 ~~the court determines that the reasons for requesting the contested case hearing were frivolous.~~

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

2

3 **SECTION 7. SECTION 50-5-310, MCA, IS AMENDED TO READ:**

4 "50-5-310. Fees. (1) There is no fee for filing a letter of intent.

5 (2) An application for certificate of need approval must be accompanied by a fee that is at least  
6 equal to 0.3% of the capital expenditure projected in the application, except that the fee may not be ~~no~~  
7 less than \$500.

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

11 (4) Fees collected under this section must be deposited in ~~a state special revenue account for use~~  
12 ~~by the department in conducting certificate of need reviews~~ the general fund."

13

14 **Section 8.** Section 20-7-436, MCA, is amended to read:

15 "20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions  
16 apply:

17 (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

18 (i) has the primary purpose of providing clinical care for children whose clinical diagnosis and  
19 resulting treatment plan require in-house residential psychiatric care; and

20 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards  
21 of the health care financing administration, or other comparable accreditation.

22 (b) The term does not include programs for children and youth that have the treatment of chemical  
23 dependency as the primary reason for treatment.

24 (2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally  
25 disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or  
26 youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient  
27 treatment of emotional problems.

28 (3) (a) "Residential treatment facility" means a facility in the state that:

29 (i) provides services for children with emotional disturbances;

30 (ii) operates for the primary purpose of providing residential psychiatric care to persons under 21

1 years of age;

2 (iii) is licensed by the department of health and environmental sciences; and

3 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing  
4 psychiatric services to individuals under 21 years of age; ~~or~~

5 ~~(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate~~  
6 ~~of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3,~~  
7 ~~prior to January 1, 1993.~~

8 (b) The term does not include programs for children and youth who have the treatment of chemical  
9 dependency as a primary reason for treatment."

10

11 **Section 9.** Section 33-31-111, MCA, is amended to read:

12 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise  
13 provided in this chapter, the insurance or health service corporation laws do not apply to any health  
14 maintenance organization authorized to transact business under this chapter. This provision does not apply  
15 to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service  
16 corporation laws of this state except with respect to its health maintenance organization activities  
17 authorized and regulated pursuant to this chapter.

18 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority  
19 or its representatives may not be construed as a violation of any law relating to solicitation or advertising  
20 by health professionals.

21 (3) A health maintenance organization authorized under this chapter may not be considered to be  
22 practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

23 ~~(4) The provisions of this chapter do not exempt a health maintenance organization from the~~  
24 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~

25

26 **Section 10.** Section 33-31-203, MCA, is amended to read:

27 **"33-31-203. Powers of insurers and health service corporations.** (1) An insurer authorized to  
28 transact insurance in this state or a health service corporation authorized to do business in this state may,  
29 either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization  
30 under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this

1 section, two or more insurers, health service corporations, or subsidiaries or affiliates ~~thereof~~ of insurers  
 2 or health service corporations may jointly organize and operate a health maintenance organization. The  
 3 business of insurance is considered to include the provision of health care services by a health maintenance  
 4 organization owned or operated by an insurer or a subsidiary ~~thereof~~ of an insurer.

5 (2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service  
 6 corporation may contract with a health maintenance organization to provide insurance or similar protection  
 7 against the cost of care provided through a health maintenance organization and to provide coverage if the  
 8 health maintenance organization fails to meet its obligations.

9 (3) The enrollees of a health maintenance organization constitute a permissible group under this  
 10 title. The insurer or health service corporation may make benefit payments to health maintenance  
 11 organizations for health care services rendered by providers under the contracts described in subsection  
 12 (2).

13 ~~(4) Nothing in this section exempts a health maintenance organization that provides health care~~  
 14 ~~services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts~~  
 15 ~~1 and 3."~~

16  
 17 **Section 11.** Section 33-31-221, MCA, is amended to read:

18 **"33-31-221. Powers of health maintenance organizations.** (1) The powers of a health  
 19 maintenance organization include but are not limited to the following:

20 (a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical  
 21 facility, or both, its ancillary equipment, and ~~such~~ property as may reasonably be required for its principal  
 22 office or for ~~such~~ purposes as may be necessary in the transaction of the business of the organization;

23 (b) the making of loans to a medical group under contract with it in furtherance of its program or  
 24 the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical  
 25 facility or hospital or in furtherance of a program providing health care services to enrollees;

26 (c) the furnishing of health care services through a provider who is under contract with or  
 27 employed by the health maintenance organization;

28 (d) the contracting with a person for the performance on its behalf of certain functions, such as  
 29 marketing, enrollment, and administration;

30 (e) the contracting with an insurer authorized to transact insurance in this state, or with a health

1 service corporation authorized to do business in this state, for the provision of insurance, indemnity, or  
2 reimbursement against the cost of health care services provided by the health maintenance organization;  
3 and

4 (f) the offering of other health care services in addition to basic health care services.

5 (2) A health maintenance organization shall file notice, with adequate supporting information, with  
6 the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The  
7 commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under  
8 subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ the commissioner's opinion, it would substantially and  
9 adversely affect the financial soundness of the health maintenance organization and endanger its ability to  
10 meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement  
11 of this subsection those activities having a de minimis effect. The commissioner may exempt certain  
12 contracts from the filing requirement whenever exercise of the authority granted in this section would have  
13 little or no effect on the health maintenance organization's financial condition and ability to meet  
14 obligations.

15 ~~(3) Nothing in this section exempts the activities of a health maintenance organization from any~~  
16 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~

17  
18 **Section 12.** Section 50-4-102, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

18

19 **Section 13.** Section 50-5-101, MCA, is amended to read:

20 **"50-5-101. Definitions.** As used in parts 1, 2, through and 4 of this chapter, unless the context  
21 clearly indicates otherwise, the following definitions apply:

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

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

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

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

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

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

9           ~~(7)~~(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

10          ~~(8) "Capital expenditure" means:~~

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

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

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

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

20          ~~(11)~~(6) "Chemical dependency facility" means a facility whose function is the treatment,  
21 rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates  
22 behavioral or health problems and endangers the health, interpersonal relationships, or economic function  
23 of an individual or the public health, welfare, or safety.

24          ~~(12)~~(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical,  
25 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of  
26 materials derived from the human body for the purpose of providing information for the diagnosis,  
27 prevention, or treatment of any disease or assessment of a medical condition.

28          ~~(13)~~(8) "College of American pathologists" means the organization nationally recognized by that  
29 name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests  
30 and accredits clinical laboratories that it finds meet its standards and requirements.

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

4           ~~(15)~~(9) "Construction" means the physical erection of a health care facility and any stage of the  
5 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health  
6 care facility.

7           ~~(16)~~(10) "Department" means the department of health and environmental sciences provided for  
8 in Title 2, chapter 15, part 21.

9           ~~(17)~~(11) "Federal acts" means federal statutes for the construction of health care facilities.

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

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

20           ~~(20)~~(14) "Health maintenance organization" means a public or private organization that provides  
21 or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through  
22 provider employees or through contractual or other arrangements with a provider or group of providers.

23           ~~(24)~~(15) "Home health agency" means a public agency or private organization or subdivision of the  
24 agency or organization that is engaged in providing home health services to individuals in the places where  
25 they live. Home health services must include the services of a licensed registered nurse and at least one  
26 other therapeutic service and may include additional support services.

27           ~~(22)~~(16) "Hospice" means a coordinated program of home and inpatient health care that provides  
28 or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's  
29 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the  
30 final stages of illness and dying and that includes formal bereavement programs as an essential component.



1 The term includes:

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

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

6 ~~(23)~~(17) "Hospital" means a facility providing, by or under the supervision of licensed physicians,  
7 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.  
8 Services provided may or may not include obstetrical care, emergency care, or any other service as allowed  
9 by state licensing authority. A hospital has an organized medical staff that is on call and available within  
10 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered  
11 nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally  
12 retarded, and tubercular patients.

13 ~~(24)~~(18) "Infirmiry" means a facility located in a university, college, government institution, or  
14 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

17 ~~(25)~~(19) "Joint commission on accreditation of hospitals" means the organization nationally  
18 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
19 requests and grants accreditation status to a health care facility that it finds meets its standards and  
20 requirements.

21 ~~(26)~~(20) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
22 including freestanding hemodialysis units.

23 ~~(27)~~(21) (a) "Long-term care facility" means a facility or part of a facility that provides skilled  
24 nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or  
25 more individuals or that provides personal care. The term does not include adult foster care licensed under  
26 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes  
27 for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under  
28 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for  
29 transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional  
30 facilities operating under the authority of the department of corrections and human services.

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

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

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

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

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

14 ~~(29)~~(22) "Medical assistance facility" means a facility that:

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

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

19 ~~(30)~~(23) "Mental health center" means a facility providing services for the prevention or diagnosis  
20 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
21 individuals, or any combination of these services.

22 ~~(31)~~(24) "Nonprofit health care facility" means a health care facility owned or operated by one or  
23 more nonprofit corporations or associations.

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

26 ~~(33)~~(26) "Offer" means the holding out by a health care facility that it can provide specific health  
27 services.

28 ~~(34)~~(27) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
29 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
30 of medical, surgical, or mental care. An outpatient facility may have observation beds.

1           ~~(35)~~(28) "Patient" means an individual obtaining services, including skilled nursing care, from a  
2 health care facility.

3           ~~(36)~~(29) "Person" means any individual, firm, partnership, association, organization, agency,  
4 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

5           ~~(37)~~(30) "Public health center" means a publicly owned facility providing health services, including  
6 laboratories, clinics, and administrative offices.

7           ~~(38)~~(31) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
8 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
9 services, psychological and social services, or vocational evaluation and training or any combination of  
10 these services and in which the major portion of the services is furnished within the facility.

11           ~~(39)~~(32) "Resident" means an individual who is in a long-term care facility for intermediate or  
12 personal care.

13           ~~(40)~~(33) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
14 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
15 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
16 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
17 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

18           ~~(41)~~(34) "Residential treatment facility" means a facility operated for the primary purpose of  
19 providing residential psychiatric care to individuals under 21 years of age.

20           ~~(42)~~(35) "State health plan" means the plan prepared by the department to project the need for  
21 health care facilities within Montana and approved by the statewide health coordinating council and the  
22 governor."

23

24           **Section 14.** Section 50-5-207, MCA, is amended to read:

25           **"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.**

26           (1) The department may deny, suspend, or revoke a health care facility license if any of the following  
27 circumstances exist:

28           (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

29           (b) The staff is insufficient in number or unqualified by lack of training or experience.

30           (c) The applicant or any person managing it has been convicted of a felony and denial of a license

1 on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits  
2 inimical to the health and safety of patients or residents.

3 (d) The applicant does not have the financial ability to operate the facility in accordance with law  
4 or rules or standards adopted by the department.

5 (e) There is cruelty or indifference affecting the welfare of the patients or residents.

6 (f) There is misappropriation of the property or funds of a patient or resident.

7 (g) There is conversion of the property of a patient or resident without the patient's or resident's  
8 consent.

9 (h) Any provision of parts 1 ~~through 3~~ and 2 is violated.

10 (2) The department may reduce a license to provisional status if as a result of an inspection it is  
11 determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed  
12 to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

13 ~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the~~  
14 ~~certificate of need requirements of part 3.~~

15 ~~(4)(3)~~ The department may provide in its revocation order that the revocation will be in effect for  
16 up to 2 years. If this provision is appealed, it must be affirmed or reversed by the board or court."

17

18 NEW SECTION. Section 15. Repealer. Sections 50-4-311, 50-5-301, 50-5-302, 50-5-304,  
19 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, and 50-5-316, MCA, are repealed.

20

21 NEW SECTION. Section 16. Contingent effective dates. (1) Subject to subsection (2), [sections  
22 1 through ~~6~~ 7] and this section are effective on passage and approval.

23 (2) If House Bill No. 2 does not contain ~~personal services~~ funding for the certificate of need  
24 program of at least \$240,000 for the ensuing biennium, then [sections 1 through ~~6~~ 7] are void and  
25 [sections ~~7 through 14~~ 8 THROUGH 15] are effective July 1, 1995. If House Bill No. 2 contains ~~personal~~  
26 ~~services~~ funding for the certificate of need program of at least \$240,000 for the ensuing biennium, then  
27 [sections ~~7 through 14~~ 8 THROUGH 15] are void.

28

-END-

## 1 SENATE BILL NO. 416

2 INTRODUCED BY SWYSGOOD, BURNETT, LYNCH, KASTEN, CRIPPEN, FRANKLIN, DOHERTY, BECK,

3 MOHL, T. NELSON, HARP, JACOBSON, FORRESTER, TVEIT, KEATING

4 BY REQUEST OF THE HUMAN SERVICES SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS

5 COMMITTEE

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CERTIFICATE  
8 OF NEED FOR HEALTH CARE FACILITIES; REMOVING BATCHING AND CHALLENGE PERIODS; REMOVING  
9 CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL  
10 PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING  
11 SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301,  
12 50-5-302, 50-5-304, ~~AND 50-5-306~~, AND 50-5-310, MCA; REPEALING SECTIONS 50-4-311, 50-5-301,  
13 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316,  
14 MCA; AND PROVIDING EFFECTIVE DATES."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

## 1 SENATE BILL NO. 416

2 INTRODUCED BY SWYSGOOD, BURNETT, LYNCH, KASTEN, CRIPPEN, FRANKLIN, DOHERTY, BECK,

3 MOHL, T. NELSON, HARP, JACOBSON, FORRESTER, TVEIT, KEATING

4 BY REQUEST OF THE HUMAN SERVICES SUBCOMMITTEE OF THE HOUSE APPROPRIATIONS

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9 CERTAIN FUNCTIONS FROM CERTIFICATE OF NEED; REVISING APPLICATION, REVIEW, AND APPEAL  
10 PROCEDURES; CONTINGENTLY REPEALING THE CERTIFICATE OF NEED PROGRAM; AMENDING  
11 SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-4-102, 50-5-101, 50-5-207, 50-5-301,  
12 50-5-302, 50-5-304, ~~AND 50-5-306~~, AND 50-5-310, MCA; REPEALING SECTIONS 50-4-311, 50-5-301,  
13 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, AND 50-5-316,  
14 MCA; AND PROVIDING EFFECTIVE DATES."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17  
18 **Section 1.** Section 50-4-102, MCA, is amended to read:19 **"50-4-102. Definitions.** For the purposes of this chapter, the following definitions apply:

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

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

22 (3) "Certificate of public advantage" or "certificate" means a written certificate issued by the  
23 authority as evidence of the authority's intention that the implementation of a cooperative agreement, when  
24 actively supervised by the authority, receive state action immunity from prosecution as a violation of state  
25 or federal antitrust laws.26 (4) "Cooperative agreement" or "agreement" means a written agreement between two or more  
27 health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs;  
28 emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or  
29 procedures; or other services customarily offered by health care facilities.

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

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

2 (7) "Health care facility" means all facilities and institutions, whether public or private, proprietary  
3 or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated  
4 persons. The term includes all facilities and institutions included in the definition of health care facility in  
5 50-5-101(10). The term does not apply to a facility operated by religious groups relying solely on spiritual  
6 means, through prayer, for healing.

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

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

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

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

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

18

19 **Section 2.** Section 50-5-101, MCA, is amended to read:

20 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly  
21 indicates otherwise, the following definitions apply:

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

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

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

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

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

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

9 ~~(7)~~(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

10 ~~(8)~~(6) "Capital expenditure" means:

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

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

15 ~~(9)~~(7) "Certificate of need" means a written authorization by the department for a person to  
 16 proceed with a proposal subject to 50-5-301.

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

20 ~~(11)~~(8) "Chemical dependency facility" means a facility whose function is the treatment,  
 21 rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates  
 22 behavioral or health problems and endangers the health, interpersonal relationships, or economic function  
 23 of an individual or the public health, welfare, or safety.

24 ~~(12)~~(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical,  
 25 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of  
 26 materials derived from the human body for the purpose of providing information for the diagnosis,  
 27 prevention, or treatment of any disease or assessment of a medical condition.

28 ~~(13)~~(10) "College of American pathologists" means the organization nationally recognized by that  
 29 name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests  
 30 and accredits clinical laboratories that it finds meet its standards and requirements.



1           ~~(14)~~(11) "Comparative review" means a joint review of two or more certificate of need applications  
2 that are determined by the department to be competitive in that the granting of a certificate of need to one  
3 of the applicants would substantially prejudice the department's review of the other applications.

4           ~~(15)~~(12) "Construction" means the physical erection of a health care facility and any stage of the  
5 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health  
6 care facility.

7           ~~(16)~~(13) "Department" means the department of health and environmental sciences provided for  
8 in Title 2, chapter 15, part 21.

9           ~~(17)~~(14) "Federal acts" means federal statutes for the construction of health care facilities.

10          ~~(18)~~(15) "Governmental unit" means the state, a state agency, a county, municipality, or political  
11 subdivision of the state, or an agency of a political subdivision.

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

20          ~~(20)~~(17) "Health maintenance organization" means a public or private organization that provides  
21 or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through  
22 provider employees or through contractual or other arrangements with a provider or group of providers.

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

27          ~~(22)~~(19) "Hospice" means a coordinated program of home and inpatient health care that provides  
28 or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's  
29 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the  
30 final stages of illness and dying and that includes formal bereavement programs as an essential component.

1 The term includes:

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

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

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

13 ~~(24)~~(21) "Infirmiry" means a facility located in a university, college, government institution, or  
14 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

17 ~~(25)~~(22) "Joint commission on accreditation of hospitals" means the organization nationally  
18 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
19 requests and grants accreditation status to a health care facility that it finds meets its standards and  
20 requirements.

21 ~~(26)~~(23) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
22 including freestanding hemodialysis units.

23 ~~(27)~~(24) (a) "Long-term care facility" means a facility or part of a facility that provides skilled  
24 nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or  
25 more individuals or that provides personal care. The term does not include adult foster care licensed under  
26 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes  
27 for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under  
28 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for  
29 transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional  
30 facilities operating under the authority of the department of corrections and human services.

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

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

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

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

11 ~~(28)~~(25) "Major medical equipment" means a single unit of medical equipment or a single system  
12 of components with related functions which is used to provide medical or other health services and costs  
13 a substantial sum of money.

14 ~~(29)~~(26) "Medical assistance facility" means a facility that:

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

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

19 ~~(30)~~(27) "Mental health center" means a facility providing services for the prevention or diagnosis  
20 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
21 individuals, or any combination of these services.

22 ~~(31)~~(28) "Nonprofit health care facility" means a health care facility owned or operated by one or  
23 more nonprofit corporations or associations.

24 ~~(32)~~(29) "Observation bed" means a bed occupied ~~for not more than 6 hours~~ by a patient recovering  
25 from surgery or other treatment.

26 ~~(33)~~(30) "Offer" means the holding out by a health care facility that it can provide specific health  
27 services.

28 ~~(34)~~(31) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
29 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
30 of medical, surgical, or mental care. An outpatient facility may have observation beds.

1           ~~(35)~~(32) "Patient" means an individual obtaining services, including skilled nursing care, from a  
2 health care facility.

3           ~~(36)~~(33) "Person" means any individual, firm, partnership, association, organization, agency,  
4 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

5           ~~(37)~~(34) "Public health center" means a publicly owned facility providing health services, including  
6 laboratories, clinics, and administrative offices.

7           ~~(38)~~(35) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
8 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
9 services, psychological and social services, or vocational evaluation and training or any combination of  
10 these services and in which the major portion of the services is furnished within the facility.

11           ~~(39)~~(36) "Resident" means an individual who is in a long-term care facility for intermediate or  
12 personal care.

13           ~~(40)~~(37) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
14 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
15 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
16 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
17 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

18           ~~(41)~~(38) "Residential treatment facility" means a facility operated for the primary purpose of  
19 providing residential psychiatric care to individuals under 21 years of age.

20           ~~(42)~~(39) "State health plan" means the plan prepared by the department to project the need for  
21 health care facilities within Montana and approved by the statewide health coordinating council and the  
22 governor."

23

24           **Section 3. Section 50-5-301, MCA, is amended to read:**

25           **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted  
26 an application for and is the holder of a certificate of need granted by the department, the person may not  
27 initiate any of the following:

28           (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure,  
29 other than to acquire an existing health care facility or to replace major medical equipment with equipment  
30 performing substantially the same function and in the same manner, that exceeds the expenditure

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing~~  
 29 ~~care, intermediate nursing care, or intermediate developmental disability care, as these levels of care are~~  
 30 ~~defined in 50-5-101; or~~ THE USE OF HOSPITAL BEDS IN EXCESS OF FIVE TO PROVIDE SERVICES TO

1 PATIENTS OR RESIDENTS NEEDING ONLY SKILLED NURSING CARE, INTERMEDIATE NURSING CARE, OR  
 2 INTERMEDIATE DEVELOPMENTAL DISABILITY CARE, AS THOSE LEVELS OF CARE ARE DEFINED IN  
 3 50-5-101; OR

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

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

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

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

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

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

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

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

28 (c) "Obligation for capital expenditure" does not include the authorization of bond sales or the  
 29 offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part  
 30 4, and Title 18, chapter 2, part 1.

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

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

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

5 (5) This section may not be construed to require a health care facility to obtain a certificate of need  
6 to undertake any activity that would NOT be subject to a certificate of need if undertaken by a person other  
7 than a health care facility."

8  
9 **Section 4.** Section 50-5-302, MCA, is amended to read:

10 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules  
11 including but not limited to rules for:

12 (a) the form and content of letters of intent and applications;

13 (b) the scheduling ~~and consolidation~~ of reviews;

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

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

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

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

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

20 (d) the format of public informational hearings and reconsideration hearings; ~~and~~

21 ~~(e) the establishment of batching periods for certificate of need applications for new beds and~~  
22 ~~major medical equipment, challenge periods, and the circumstances under which applications from different~~  
23 ~~batches may be comparatively reviewed; and~~

24 ~~(f) the circumstances under which a certificate of need may be approved for the use of hospital~~  
25 ~~beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care~~  
26 ~~to patients or residents needing only that level of care; AND~~

27 (F) THE CIRCUMSTANCES UNDER WHICH A CERTIFICATE OF NEED MAY BE APPROVED FOR THE  
28 USE OF HOSPITAL BEDS IN EXCESS OF FIVE TO PROVIDE SKILLED NURSING CARE, INTERMEDIATE  
29 NURSING CARE, OR INTERMEDIATE DEVELOPMENTAL DISABILITY CARE TO PATIENTS OR RESIDENTS  
30 NEEDING ONLY THAT LEVEL OF CARE.

1 (2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50%  
2 or more of an existing health care facility, they shall submit to the department a letter noting intent to  
3 acquire the facility and of the services to be offered in the facility and its bed capacity.

4 (3) Any person intending to initiate an activity for which a certificate of need is required shall  
5 submit a letter of intent to the department.

6 (4) ~~If the proposal is for new beds or major medical equipment, the~~ THE department shall place the  
7 ~~letter of intent in the appropriate batch~~ may determine that the proposals should be comparatively reviewed  
8 WITH SIMILAR PROPOSALS unless, in the case of beds, the proposal is determined to be exempt from  
9 review.

10 (5) Any ON THE 10TH DAY OF EACH MONTH, THE DEPARTMENT SHALL PUBLISH IN A  
11 NEWSPAPER OF GENERAL CIRCULATION IN THE AREA TO BE SERVED BY THE PROPOSAL A  
12 DESCRIPTION OF EACH LETTER OF INTENT RECEIVED BY THE DEPARTMENT DURING THE PRECEDING  
13 CALENDAR MONTH. WITHIN 30 DAYS OF THE PUBLICATION, ANY person who desires comparative  
14 review with a proposal ~~in a batch~~ DESCRIBED IN THE PUBLICATION must submit a ~~challenge~~ letter of intent  
15 ~~at least by the end of the challenge period following the batching period for that batch~~ requesting  
16 comparative review.

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

20 (7) Within 20 working days after receipt of an application, the department shall determine whether  
21 it is complete and, if the application is found incomplete, shall send a written request to the applicant for  
22 the necessary additional information. Upon receipt of the additional information from the applicant, the  
23 department shall have an additional 15 working days to determine if the application is complete and to send  
24 a notice to the applicant that the application is complete or incomplete. ~~The request for added information~~  
25 ~~may be repeated as long as the information submitted remains incomplete, and the department shall have~~  
26 ~~15 working days after each submission to send a notice that the application is complete or incomplete.~~

27 (8) If a proposal is to undergo comparative review with another proposal but the applicant fails to  
28 submit the necessary additional information requested by the department by the deadline prescribed by  
29 department rules, the application ~~must be dropped from the current batch and assigned to the next batching~~  
30 period is considered withdrawn.



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

4 (10) ~~After an application is designated complete, immediate notification must be sent to the~~  
 5 ~~applicant and all other affected persons regarding the department's projected time schedule for review of~~  
 6 ~~the application.~~ The review period for an application may be no longer than 90 calendar days after the  
 7 ~~notice is sent~~ application is initially received or, if ~~a challenging~~ the application has been submitted is to be  
 8 comparatively reviewed as provided in subsection (5), within 90 days after ~~the notice has been sent for all~~  
 9 ~~such challenging applications~~ to be comparatively reviewed are received. A longer period is permitted with  
 10 the consent of all affected applicants.

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

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

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

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

22  
 23 **Section 5.** Section 50-5-304, MCA, is amended to read:

24 **"50-5-304. Review criteria, required findings, and standards.** The department shall by rule  
 25 promulgate and ~~utilize~~ use, as appropriate, specific criteria for reviewing certificate of need applications  
 26 under this chapter, including but not limited to the following considerations and required findings:

27 (1) the degree to which the proposal being reviewed;

28 (a) demonstrates that the service is needed by the population within the service area defined in the  
 29 proposal;

30 (b) provides data that demonstrates the need for services contrary to the current state health plan,

1 including but not limited to waiting lists, projected service volumes, differences in cost and quality of  
 2 services, and availability of services; or

3 (c) is consistent with the current state health plan;

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

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

7 (4) the immediate and long-term financial feasibility of the proposal as well as the probable impact  
 8 of the proposal on the costs of and charges for providing health services by the person proposing the health  
 9 service;

10 (5) the relationship and financial impact of the services proposed to be provided to the existing  
 11 health care system of the area in which such services are proposed to be provided;

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

13 (7) the availability of resources, including health manpower, management personnel, and funds for  
 14 capital and operating needs, for the provision of services proposed to be provided and the availability of  
 15 alternative uses of ~~such~~ the resources for the provision of other health services;

16 (8) the relationship, including the organizational relationship, of the health services proposed to be  
 17 provided to ancillary or support services;

18 (9) in the case of a construction project, the costs and methods of the proposed construction,  
 19 including the costs and methods of energy provision, and the probable impact of the construction project  
 20 reviewed on the costs of providing health services by the person proposing the construction project; ~~and~~

21 (10) the distance, convenience, cost of transportation, and accessibility of health services for  
 22 persons who live outside urban areas in relation to the proposal; and

23 (11) in the case of a project to add long-term care facility beds:

24 (a) the need for the beds that takes into account the current and projected occupancy of long-term  
 25 care beds in the community;

26 (b) the current and projected population over 65 years of age in the community; and

27 (c) other appropriate factors."

28  
 29 **Section 6.** Section 50-5-306, MCA, is amended to read:

30 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request ~~the department to~~

1 ~~reconsider its decision or hold a public hearing and to reconsider its decision. The request must specify~~  
 2 ~~all issues to be addressed by the department. The department shall grant the request if the affected person~~  
 3 ~~submits the request in writing and if the request is received by the department within 30 calendar days~~  
 4 ~~after the initial decision is announced. A CONTESTED CASE HEARING BEFORE THE DEPARTMENT UNDER~~  
 5 ~~THE PROVISIONS OF TITLE 2, CHAPTER 4, BY FILING A WRITTEN REQUEST WITH THE DEPARTMENT~~  
 6 ~~WITHIN 30 DAYS AFTER RECEIPT OF THE NOTIFICATION REQUIRED IN 50-5-302(13). THE WRITTEN~~  
 7 ~~REQUEST FOR A HEARING MUST INCLUDE:~~

8 (A) A STATEMENT DESCRIBING EACH FINDING AND CONCLUSION IN THE DEPARTMENT'S  
 9 INITIAL DECISION THAT WILL BE CONTESTED AT THE HEARING AND WHY EACH FINDING AND  
 10 CONCLUSION IS OBJECTIONABLE OR IN ERROR; AND

11 (B) A SUMMARY OF THE EVIDENCE THAT WILL BE SUBMITTED TO CONTEST THE FINDINGS AND  
 12 CONCLUSION IDENTIFIED IN SUBSECTION (1)(A).

13 (2) THE HEARING MUST BE LIMITED TO THE ISSUES IDENTIFIED UNDER SUBSECTION (1) AND  
 14 ANY OTHER ISSUES IDENTIFIED THROUGH DISCOVERY.

15 ~~(2)(3) The public hearing to reconsider must be held within 30 calendar days after the request is~~  
 16 ~~received unless the requester agrees to waive the time limit. In a case in which the department has~~  
 17 ~~approved an application for a certificate of need, only the person whose application has been approved may~~  
 18 ~~waive the time limit. THE HEARINGS EXAMINER EXTENDS THE TIME LIMIT FOR GOOD CAUSE.~~

19 ~~(3) The reconsideration hearing must be conducted pursuant to the contested case provisions for~~  
 20 ~~informal proceedings of the Montana Administrative Procedure Act.~~

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

24 (5) Any adversely affected person who was a party to the hearing may appeal the department's  
 25 final decision to the district court as provided in Title 2, chapter 4, part 7.

26 (6) ~~If a petition to appeal the decision is filed, the decision must be stayed pending resolution of~~  
 27 ~~the appeal by the courts. On application by a person whose proposal has been approved under the~~  
 28 ~~procedure provided for in 50-5-302, a district court may order a person who requested a contested case~~  
 29 ~~hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if~~  
 30 ~~the court determines that the reasons for requesting the contested case hearing were frivolous.~~

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

2

3 **SECTION 7. SECTION 50-5-310, MCA, IS AMENDED TO READ:**

4 **"50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

5 (2) An application for certificate of need approval must be accompanied by a fee that is at least  
6 equal to 0.3% of the capital expenditure projected in the application, except that the fee may not be ~~no~~  
7 less than \$500.

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

11 (4) Fees collected under this section must be deposited in ~~a state special revenue account for use~~  
12 ~~by the department in conducting certificate of need reviews~~ the general fund."

13

14 **Section 8.** Section 20-7-436, MCA, is amended to read:

15 **"20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions  
16 apply:

17 (1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

18 (i) has the primary purpose of providing clinical care for children whose clinical diagnosis and  
19 resulting treatment plan require in-house residential psychiatric care; and

20 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards  
21 of the health care financing administration, or other comparable accreditation.

22 (b) The term does not include programs for children and youth that have the treatment of chemical  
23 dependency as the primary reason for treatment.

24 (2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally  
25 disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or  
26 youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient  
27 treatment of emotional problems.

28 (3) (a) "Residential treatment facility" means a facility in the state that:

29 (i) provides services for children with emotional disturbances;

30 (ii) operates for the primary purpose of providing residential psychiatric care to persons under 21

1 years of age;

2 (iii) is licensed by the department of health and environmental sciences; and

3 (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing  
4 psychiatric services to individuals under 21 years of age; ~~or~~

5 ~~(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate~~  
6 ~~of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3,~~  
7 ~~prior to January 1, 1993.~~

8 (b) The term does not include programs for children and youth who have the treatment of chemical  
9 dependency as a primary reason for treatment."

10

11 **Section 9.** Section 33-31-111, MCA, is amended to read:

12 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise  
13 provided in this chapter, the insurance or health service corporation laws do not apply to any health  
14 maintenance organization authorized to transact business under this chapter. This provision does not apply  
15 to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service  
16 corporation laws of this state except with respect to its health maintenance organization activities  
17 authorized and regulated pursuant to this chapter.

18 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority  
19 or its representatives may not be construed as a violation of any law relating to solicitation or advertising  
20 by health professionals.

21 (3) A health maintenance organization authorized under this chapter may not be considered to be  
22 practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

23 ~~(4) The provisions of this chapter do not exempt a health maintenance organization from the~~  
24 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~

25

26 **Section 10.** Section 33-31-203, MCA, is amended to read:

27 **"33-31-203. Powers of insurers and health service corporations.** (1) An insurer authorized to  
28 transact insurance in this state or a health service corporation authorized to do business in this state may,  
29 either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization  
30 under the provisions of this chapter. Notwithstanding any other law which may be inconsistent with this

1 section, two or more insurers, health service corporations, or subsidiaries or affiliates ~~thereof~~ of insurers  
 2 or health service corporations may jointly organize and operate a health maintenance organization. The  
 3 business of insurance is considered to include the provision of health care services by a health maintenance  
 4 organization owned or operated by an insurer or a subsidiary ~~thereof~~ of an insurer.

5 (2) Notwithstanding any insurance or health service corporation laws, an insurer or a health service  
 6 corporation may contract with a health maintenance organization to provide insurance or similar protection  
 7 against the cost of care provided through a health maintenance organization and to provide coverage if the  
 8 health maintenance organization fails to meet its obligations.

9 (3) The enrollees of a health maintenance organization constitute a permissible group under this  
 10 title. The insurer or health service corporation may make benefit payments to health maintenance  
 11 organizations for health care services rendered by providers under the contracts described in subsection  
 12 (2).

13 ~~(4) Nothing in this section exempts a health maintenance organization that provides health care~~  
 14 ~~services from complying with the applicable certificate of need requirements under Title 50, chapter 5, parts~~  
 15 ~~1 and 3."~~

16  
 17 **Section 11.** Section 33-31-221, MCA, is amended to read:

18 **"33-31-221. Powers of health maintenance organizations.** (1) The powers of a health  
 19 maintenance organization include but are not limited to the following:

20 (a) the purchase, lease, construction, renovation, operation, or maintenance of a hospital, a medical  
 21 facility, or both, its ancillary equipment, and ~~such~~ property as may reasonably be required for its principal  
 22 office or for ~~such~~ purposes as may be necessary in the transaction of the business of the organization;

23 (b) the making of loans to a medical group under contract with it in furtherance of its program or  
 24 the making of loans to a corporation under its control for the purpose of acquiring or constructing a medical  
 25 facility or hospital or in furtherance of a program providing health care services to enrollees;

26 (c) the furnishing of health care services through a provider who is under contract with or  
 27 employed by the health maintenance organization;

28 (d) the contracting with a person for the performance on its behalf of certain functions, such as  
 29 marketing, enrollment, and administration;

30 (e) the contracting with an insurer authorized to transact insurance in this state, or with a health

1 service corporation authorized to do business in this state, for the provision of insurance, indemnity, or  
 2 reimbursement against the cost of health care services provided by the health maintenance organization;  
 3 and

4 (f) the offering of other health care services in addition to basic health care services.

5 (2) A health maintenance organization shall file notice, with adequate supporting information, with  
 6 the commissioner before exercising a power granted in subsection (1)(a), (1)(b), or (1)(d). The  
 7 commissioner may, after notice and hearing, within 60 days disapprove the exercise of a power under  
 8 subsection (1)(a), (1)(b), or (1)(d) only if, in ~~his~~ the commissioner's opinion, it would substantially and  
 9 adversely affect the financial soundness of the health maintenance organization and endanger its ability to  
 10 meet its obligations. The commissioner may make reasonable rules exempting from the filing requirement  
 11 of this subsection those activities having a de minimis effect. The commissioner may exempt certain  
 12 contracts from the filing requirement whenever exercise of the authority granted in this section would have  
 13 little or no effect on the health maintenance organization's financial condition and ability to meet  
 14 obligations.

15 ~~(3) Nothing in this section exempts the activities of a health maintenance organization from any~~  
 16 ~~applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3."~~

17  
 18 **Section 12.** Section 50-4-102, MCA, is amended to read:

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

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

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

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

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

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

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

2 (7) "Health care facility" means all facilities and institutions, whether public or private, proprietary  
3 or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated  
4 persons. The term includes all facilities and institutions included in the definition of health care facility in  
5 50-5-101(49). The term does not apply to a facility operated by religious groups relying solely on spiritual  
6 means, through prayer, for healing.

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

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

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

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

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

18

19 **Section 13.** Section 50-5-101, MCA, is amended to read:

20 **"50-5-101. Definitions.** As used in parts 1, 2, through and 4 of this chapter, unless the context  
21 clearly indicates otherwise, the following definitions apply:

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

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

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



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

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

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

9           ~~(7)~~(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

10          ~~(8) "Capital expenditure" means:~~

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

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

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

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

20          ~~(11)~~(6) "Chemical dependency facility" means a facility whose function is the treatment,  
21 rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates  
22 behavioral or health problems and endangers the health, interpersonal relationships, or economic function  
23 of an individual or the public health, welfare, or safety.

24          ~~(12)~~(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical,  
25 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of  
26 materials derived from the human body for the purpose of providing information for the diagnosis,  
27 prevention, or treatment of any disease or assessment of a medical condition.

28          ~~(13)~~(8) "College of American pathologists" means the organization nationally recognized by that  
29 name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests  
30 and accredits clinical laboratories that it finds meet its standards and requirements.

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

4           ~~(15)~~(9) "Construction" means the physical erection of a health care facility and any stage of the  
5 physical erection, including ground breaking, or remodeling, replacement, or renovation of an existing health  
6 care facility.

7           ~~(16)~~(10) "Department" means the department of health and environmental sciences provided for  
8 in Title 2, chapter 15, part 21.

9           ~~(17)~~(11) "Federal acts" means federal statutes for the construction of health care facilities.

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

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

20          ~~(20)~~(14) "Health maintenance organization" means a public or private organization that provides  
21 or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through  
22 provider employees or through contractual or other arrangements with a provider or group of providers.

23          ~~(21)~~(15) "Home health agency" means a public agency or private organization or subdivision of the  
24 agency or organization that is engaged in providing home health services to individuals in the places where  
25 they live. Home health services must include the services of a licensed registered nurse and at least one  
26 other therapeutic service and may include additional support services.

27          ~~(22)~~(16) "Hospice" means a coordinated program of home and inpatient health care that provides  
28 or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's  
29 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the  
30 final stages of illness and dying and that includes formal bereavement programs as an essential component.

1 The term includes:

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

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

6 ~~(23)~~(17) "Hospital" means a facility providing, by or under the supervision of licensed physicians,  
7 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.  
8 Services provided may or may not include obstetrical care, emergency care, or any other service as allowed  
9 by state licensing authority. A hospital has an organized medical staff that is on call and available within  
10 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered  
11 nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally  
12 retarded, and tubercular patients.

13 ~~(24)~~(18) "Infirmiry" means a facility located in a university, college, government institution, or  
14 industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

17 ~~(25)~~(19) "Joint commission on accreditation of hospitals" means the organization nationally  
18 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their  
19 requests and grants accreditation status to a health care facility that it finds meets its standards and  
20 requirements.

21 ~~(26)~~(20) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases,  
22 including freestanding hemodialysis units.

23 ~~(27)~~(21) (a) "Long-term care facility" means a facility or part of a facility that provides skilled  
24 nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or  
25 more individuals or that provides personal care. The term does not include adult foster care licensed under  
26 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes  
27 for individuals with severe disabilities licensed under 52-4-203, youth care facilities licensed under  
28 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for  
29 transients, students, or individuals not requiring institutional health care, or juvenile and adult correctional  
30 facilities operating under the authority of the department of corrections and human services.

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

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

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

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

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

14 ~~(29)~~(22) "Medical assistance facility" means a facility that:

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

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

19 ~~(30)~~(23) "Mental health center" means a facility providing services for the prevention or diagnosis  
20 of mental illness, the care and treatment of mentally ill patients or the rehabilitation of mentally ill  
21 individuals, or any combination of these services.

22 ~~(31)~~(24) "Nonprofit health care facility" means a health care facility owned or operated by one or  
23 more nonprofit corporations or associations.

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

26 ~~(33)~~(26) "Offer" means the holding out by a health care facility that it can provide specific health  
27 services.

28 ~~(34)~~(27) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under  
29 the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need  
30 of medical, surgical, or mental care. An outpatient facility may have observation beds.

1           ~~(35)~~(28) "Patient" means an individual obtaining services, including skilled nursing care, from a  
2 health care facility.

3           ~~(36)~~(29) "Person" means any individual, firm, partnership, association, organization, agency,  
4 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

5           ~~(37)~~(30) "Public health center" means a publicly owned facility providing health services, including  
6 laboratories, clinics, and administrative offices.

7           ~~(38)~~(31) "Rehabilitation facility" means a facility that is operated for the primary purpose of  
8 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and  
9 services, psychological and social services, or vocational evaluation and training or any combination of  
10 these services and in which the major portion of the services is furnished within the facility.

11           ~~(39)~~(32) "Resident" means an individual who is in a long-term care facility for intermediate or  
12 personal care.

13           ~~(40)~~(33) "Residential psychiatric care" means active psychiatric treatment provided in a residential  
14 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,  
15 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or  
16 remedy the individual's condition. Residential psychiatric care must be individualized and designed to  
17 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

18           ~~(41)~~(34) "Residential treatment facility" means a facility operated for the primary purpose of  
19 providing residential psychiatric care to individuals under 21 years of age.

20           ~~(42)~~(35) "State health plan" means the plan prepared by the department to project the need for  
21 health care facilities within Montana and approved by the statewide health coordinating council and the  
22 governor."

23

24           **Section 14.** Section 50-5-207, MCA, is amended to read:

25           **"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.**

26           (1) The department may deny, suspend, or revoke a health care facility license if any of the following  
27 circumstances exist:

- 28           (a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.
- 29           (b) The staff is insufficient in number or unqualified by lack of training or experience.
- 30           (c) The applicant or any person managing it has been convicted of a felony and denial of a license

1 on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits  
2 inimical to the health and safety of patients or residents.

3 (d) The applicant does not have the financial ability to operate the facility in accordance with law  
4 or rules or standards adopted by the department.

5 (e) There is cruelty or indifference affecting the welfare of the patients or residents.

6 (f) There is misappropriation of the property or funds of a patient or resident.

7 (g) There is conversion of the property of a patient or resident without the patient's or resident's  
8 consent.

9 (h) Any provision of parts 1 ~~through 3~~ and 2 is violated.

10 (2) The department may reduce a license to provisional status if as a result of an inspection it is  
11 determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed  
12 to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

13 ~~(3) The denial, suspension, or revocation of a health care facility license is not subject to the~~  
14 ~~certificate of need requirements of part 3.~~

15 ~~(4)~~(3) The department may provide in its revocation order that the revocation will be in effect for  
16 up to 2 years. If this provision is appealed, it must be affirmed or reversed by the board or court."

17

18 NEW SECTION. Section 15. Repealer. Sections 50-4-311, 50-5-301, 50-5-302, 50-5-304,  
19 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, 50-5-310, and 50-5-316, MCA, are repealed.

20

21 NEW SECTION. Section 16. Contingent effective dates. (1) Subject to subsection (2), [sections  
22 1 through ~~6~~ 7] and this section are effective on passage and approval.

23 (2) If House Bill No. 2 does not contain ~~personal services~~ funding for the certificate of need  
24 program of at least \$240,000 for the ensuing biennium, then [sections 1 through ~~6~~ 7] are void and  
25 [sections ~~7 through 14~~ 8 THROUGH 15] are effective July 1, 1995. If House Bill No. 2 contains ~~personal~~  
26 ~~services~~ funding for the certificate of need program of at least \$240,000 for the ensuing biennium, then  
27 [sections ~~7 through 14~~ 8 THROUGH 15] are void.

28

-END-