

1 HOUSE BILL NO. 108

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES;
6 ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES,
7 MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND
8 INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR
9 LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING
10 COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
11 SERVICES; ADDING A DEFINITION OF "SWING BED"; CLARIFYING WHEN A CHANGE IN BED CAPACITY
12 REQUIRES A CERTIFICATE OF NEED; DELETING THE PROHIBITION AGAINST REQUIRING A HEALTH CARE
13 FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE SUBJECT TO A
14 REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY; DELETING THE
15 AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW;
16 REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; PROVIDING THAT A CERTIFICATE OF
17 NEED FOR A PROJECT EXPIRES WHEN THE PROJECT IS LICENSED; DELETING THE REQUIREMENT THAT
18 A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS;
19 ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE
20 DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT
21 THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY
22 UNDER CERTAIN CIRCUMSTANCES; REVISING APPLICATION AND RECONSIDERATION HEARING FEES;
23 AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305,
24 50-5-306, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301, 50-78-103,
25 53-6-106, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND PROVIDING AN
26 IMMEDIATE EFFECTIVE DATE."

27
28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:29
30 **Section 1.** Section 7-34-2102, MCA, is amended to read:

1 **7-34-2102. Definition.** As used in this part, unless the context requires otherwise, ~~"hospital~~
2 ~~facilities"~~ the following definitions apply:

3 (1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient facilities,
4 ~~public health centers~~, rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities,
5 all as defined in 50-5-101. The term includes public health centers.

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

8

9 **Section 2.** Section 7-34-2201, MCA, is amended to read:

10 **7-34-2201. Erection and management of county health care facilities -- definition -- provision of**
11 **health care services.** (1) The board of county commissioners has jurisdiction and power, under the
12 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health
13 care facilities and to provide health care services in those facilities as permitted by law.

14 (2) The board of county commissioners of a county that has or may acquire title to a site and
15 building or buildings suitable for county health care purposes has jurisdiction and power, under the
16 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and
17 operate the building or buildings for health care purposes as provided by this section.

18 (3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise,
19 the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility,
20 a hospice, a kidney treatment center, an outpatient facility, ~~a public health center~~, a rehabilitation facility,
21 a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as
22 defined in 7-34-2102, or any combination and related medical facilities including offices for physicians or
23 other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."
24

25 **Section 3.** Section 50-5-101, MCA, is amended to read:

26 **50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly
27 indicates otherwise, the following definitions apply:

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

29 (2) "Adult day-care center" means a facility, freestanding or connected to another health care
30 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of

1 daily living but that does not provide overnight care.

2 (3) (a) "Adult foster care home" means a private home that offers light personal care or custodial
3 care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner
4 of the home.

5 (b) As used in this subsection (3), the following definitions apply:

6 (i) "Aged person" means a person as defined by department rule as aged.

7 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled
8 adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person
9 is available to meet those basic needs.

10 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
11 department rule as disabled.

12 (iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
13 personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine
14 administration. The term does not include the administration of prescriptive medications.

15 (4) "Affected person" means an applicant for a certificate of need, a health care facility located
16 in the geographic area affected by the application, an agency that establishes rates for health care facilities,
17 or a third-party payer who reimburses health care facilities in the area affected by the proposal.

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

21 (6) "Capital expenditure" means:

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

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

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

28 (8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
29 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health
30 problems and endangers the health, interpersonal relationships, or economic function of an individual or the

1 public health, welfare, or safety.

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

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

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

12 (12) "Construction" means the physical erection of a health care facility and any stage of the
13 physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health
14 care facility.

15 (13) "Department" means the department of public health and human services provided for in
16 2-15-2201.

17 (14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
18 diseases and includes freestanding hemodialysis units.

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

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

22 (17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
23 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
24 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
25 individual. The term does not include offices of private physicians or dentists. The term includes ambulatory
26 surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance
27 organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries,
28 long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, ~~public~~
29 ~~health centers~~, rehabilitation facilities, residential care facilities, and residential treatment facilities.

30 (18) "Health maintenance organization" means a public or private organization that provides or

1 arranges for health care services to enrollees on a prepaid or other financial basis, either directly through
2 provider employees or through contractual or other arrangements with a provider or group of providers.

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

7 (20) "Home infusion therapy agency" means a health care facility that provides home infusion
8 therapy services.

9 (21) "Home infusion therapy services" means the preparation, administration, or furnishing of
10 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's
11 residence. The services include an educational component for the patient, the patient's caregiver, or the
12 patient's family member.

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

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

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

22 (23) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
23 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
24 Services provided may or may not include obstetrical care, emergency care, or any other service allowed
25 by state licensing authority. A hospital has an organized medical staff that is on call and available within
26 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered
27 nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally
28 retarded, and tubercular patients.

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

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

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

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

7 (26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing
8 care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of
9 two or more individuals or that provides personal care. The term does not include community homes for
10 persons with developmental disabilities licensed under 53-20-305; community homes for persons with
11 severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels,
12 boardinghouses, roominghouses, or similar accommodations providing for transients, students, or
13 individuals who do not require institutional health care; or juvenile and adult correctional facilities operating
14 under the authority of the department of corrections.

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

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

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

23 (e) "Personal care" means the provision of services and care for residents who need some
24 assistance in performing the activities of daily living.

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

28 ~~(28)~~(27) "Medical assistance facility" means a facility that:

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

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

3 ~~(29)~~(28) "Mental health center" means a facility providing services for the prevention or diagnosis
4 of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals,
5 or any combination of these services.

6 ~~(30)~~(29) "Nonprofit health care facility" means a health care facility owned or operated by one or
7 more nonprofit corporations or associations.

8 ~~(31)~~(30) "Observation bed" means a bed occupied by a patient recovering from surgery or other
9 treatment.

10 ~~(32)~~(31) "Offer" means the representation by a health care facility that it can provide specific health
11 services.

12 ~~(33)~~(32) "Outpatient facility" means a facility, located in or apart from a hospital, that provides,
13 under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients
14 in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An
15 ambulatory surgical facility is also an outpatient facility.

16 ~~(34)~~(33) "Patient" means an individual obtaining services, including skilled nursing care, from a
17 health care facility.

18 ~~(35)~~(34) "Person" means an individual, firm, partnership, association, organization, agency,
19 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

20 ~~(36)~~(35) "Personal-care facility" means a facility in which personal care is provided for residents
21 in either a category A facility or a category B facility as provided in 50-5-227.

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

24 ~~(38)~~(36) "Rehabilitation facility" means a facility that is operated for the primary purpose of
25 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and
26 services, psychological and social services, or vocational evaluation and training or any combination of
27 these services and in which the major portion of the services is furnished within the facility.

28 ~~(39)~~(37) "Resident" means an individual who is in a long-term care facility or in a residential care
29 facility.

30 ~~(40)~~(38) "Residential care facility" means an adult day-care center, an adult foster care home, a

1 personal-care facility, or a retirement home.

2 ~~(41)~~(39) "Residential psychiatric care" means active psychiatric treatment provided in a residential
3 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,
4 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or
5 remedy the individual's condition. Residential psychiatric care must be individualized and designed to
6 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

7 ~~(42)~~(40) "Residential treatment facility" means a facility operated for the primary purpose of
8 providing residential psychiatric care to individuals under 21 years of age.

9 ~~(43)~~(41) "Retirement home" means a building or buildings in which separate living accommodations
10 are rented or leased to individuals who use those accommodations as their primary residence.

11 ~~(44)~~(42) "State health care facilities plan" means the plan prepared by the department to project
12 the need for health care facilities within Montana and approved by the ~~statewide health coordinating council~~
13 and the governor and a statewide health coordinating council appointed by the director of the department.

14 (43) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified
15 for providing long-term care pursuant to 42 CFR 482.66."

16

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

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

21 (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure
22 that exceeds \$1.5 million, other than to acquire an existing health care facility ~~or to replace major medical~~
23 ~~equipment with equipment performing substantially the same function and in the same manner, that~~
24 ~~exceeds the expenditure thresholds established in subsection (4).~~ The costs of any studies, surveys,
25 designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and
26 other services) essential to the acquisition, improvement, expansion, or replacement of any plant ~~or~~
27 ~~equipment~~ with respect to which an expenditure is made must be included in determining if the expenditure
28 exceeds ~~the expenditure thresholds~~ \$1.5 million.

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

1 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional,
 2 rounded down to the nearest whole number, whichever figure is smaller, ~~in any 2-year period~~ and no beds
 3 have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is
 4 received;

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

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

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

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

15 ~~(e)(d)~~ the incurring of an obligation for a capital expenditure by any person or persons to acquire
 16 50% or more of an existing health care facility unless:

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

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

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

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

23 ~~(h)(g)~~ the use of hospital beds in excess of five to provide swing-bed services to patients or
 24 residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental
 25 disability care, as those levels of care are defined in 50-5-101; or

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

29 ~~(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated~~
 30 ~~beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a~~

1 ~~certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.~~

2 ~~(3)(2)~~ For purposes of this part, the following definitions apply:

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

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

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

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

14 (ii) The term does not include residential care facilities, as defined in 50-5-101; community homes
15 for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with
16 severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under
17 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for
18 transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional
19 facilities operating under the authority of the department of corrections.

20 ~~(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the~~
21 ~~offering or sale of bonds pursuant to the state long range building program under Title 17, chapter 5, part~~
22 ~~4, and Title 18, chapter 2, part 1.~~

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

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

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

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

30

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

2 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules
3 including but not limited to rules for:

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

5 (b) the scheduling of reviews;

6 ~~(c) the abbreviated review of a proposal that:~~

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

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

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

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

12 ~~(c)~~ (c) the format of public informational hearings and reconsideration hearings;

13 ~~(d)~~ (d) the circumstances under which applications may be comparatively reviewed; and

14 ~~(e)~~ (e) the circumstances under which a certificate of need may be approved for the use of hospital
15 beds as swing beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental
16 disability care to patients or residents needing only that level of care.

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

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

22 (4) The department may determine that the proposals should be comparatively reviewed with
23 similar proposals ~~unless, in the case of beds, the proposal is determined to be exempt from review that are~~
24 also subject to review.

25 (5) On the 10th day of each month, the department shall publish in a newspaper of general
26 circulation in the area to be served by the proposal a description of each letter of intent received by the
27 department during the preceding calendar month. Within 30 days of the publication, any person who
28 desires comparative review with a proposal described in the publication must submit a letter of intent
29 requesting comparative review.

30 (6) The department shall give to each person submitting a letter of intent written notice of the

1 deadline for submission of an application for certificate of need, which will be no less than 30 days after
2 the notice is sent.

3 (7) Within 20 working days after receipt of an application, the department shall determine whether
4 it is complete and, if the application is found incomplete, shall send a written request to the applicant ~~for~~
5 specifying the necessary additional information and a date by which the additional information must be
6 submitted to the department. The department shall allow at least 15 days after the mailing of its written
7 request for the submission of the additional information. Upon receipt of the additional information from
8 the applicant, the department ~~shall have~~ has an additional 15 working days to determine if the application
9 is complete and, if the application is still incomplete, to send a notice to the applicant that the application
10 is ~~complete or~~ incomplete.

11 (8) ~~If a proposal is to undergo comparative review with another proposal but~~ the applicant fails to
12 submit the necessary additional information requested by the department by the deadline prescribed by the
13 ~~department rules,~~ the application is considered withdrawn.

14 (9) If the department fails to send ~~the notices~~ either the request for additional information or the
15 notice of incompleteness required by subsection (7) within the ~~periods~~ period prescribed in subsection (7),
16 the application is considered to be complete on the last day of the time period during which the notice
17 should have been sent.

18 (10) The review period for an application may be no longer than 90 calendar days after the
19 application is initially received or, if the application is to be comparatively reviewed as provided in
20 subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer
21 period is permitted with the consent of all affected applicants.

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

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

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

29 (14) If the department fails to reach a decision and notify the applicant of its decision within the
30 deadlines established in this section and if that delay constitutes an abuse of the department's discretion,

1 the applicant may apply to district court for a writ of mandamus to force the department to issue the
2 certificate of need."

3

4 **Section 6.** Section 50-5-304, MCA, is amended to read:

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

8 (1) the degree to which the proposal being reviewed:

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

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

14 (c) is consistent with the current state health care facilities plan;

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

16 (3) the availability of less costly quality-equivalent or more effective alternative methods of
17 providing the services;

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

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

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

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

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

29 (9) in the case of a construction project, the costs and methods of the proposed construction,
30 including the costs and methods of energy provision, and the probable impact of the construction project

1 reviewed on the costs of providing health services by the person proposing the construction project;

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

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

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

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

8 (c) other appropriate factors."

9
10 **Section 7.** Section 50-5-305, MCA, is amended to read:

11 **"50-5-305. Period of validity of approved application.** (1) ~~Unless an extension is granted pursuant~~
12 ~~to subsection (3), a~~ A certificate of need shall expire ~~expires:~~

13 (a) 1 year after the decision to issue it is final if the applicant has not commenced construction on
14 a project requiring construction or has not incurred an enforceable capital expenditure commitment for a
15 project not requiring construction;

16 (b) 1 year after the date the project is commenced plus the estimated period of time for completion
17 shown in the application if the approved project is not complete; ~~or~~

18 (c) when the department determines, after opportunity for a hearing, that the holder of the
19 certificate of need has violated the provisions of this chapter, rules adopted ~~hereunder~~ under this chapter,
20 or the terms of the certificate of need; or

21 (d) on the date that the project for which the certificate of need was granted is first licensed by
22 the department.

23 (2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under
24 50-5-306, the final decision will be that following the hearing or resolving the appeal.

25 (3) The holder of an unexpired certificate of need subject to expiration under the circumstances
26 specified in subsection (1)(a) or (1)(b) may apply to the department to extend the term of the certificate
27 of need for one additional period not to exceed 6 months. The department may grant ~~such~~ an extension
28 upon the applicant's demonstrating good cause as defined by department rule.

29 ~~(4) The holder of an unexpired certificate of need shall report to the department in writing on the~~
30 ~~status of his project at the end of each 6-month period after being granted a certificate of need until~~

1 ~~completion of the project for which the certificate of need was issued."~~

2

3 **Section 8.** Section 50-5-306, MCA, is amended to read:

4 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request a contested case
5 hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with
6 the department 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 initial decision that will
9 be contested at the hearing and why each finding and conclusion is objectionable or in error; and

10 (b) a summary of the evidence that will be submitted to contest the findings and conclusion
11 identified in subsection (1)(a).

12 (2) The hearing must be limited to the issues identified under subsection (1) and any other issues
13 identified through discovery.

14 (3) The public hearing must be held within 30 calendar days after the request is received unless
15 the hearings examiner extends the time limit for good cause.

16 (4) The department shall make its final decision and serve the appellant with written findings of
17 fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing
18 unless the parties to the hearing agree to a different date.

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

21 (6) On application by a person whose proposal has been approved under the procedure provided
22 for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the
23 successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines
24 that the reasons for requesting the contested case hearing were frivolous.

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

26

27 **Section 9.** Section 50-5-308, MCA, is amended to read:

28 **"50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed
29 capital expenditure if:

30 (1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined

1 by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure,
2 certification, or accreditation standards; and

3 (2) the department has determined that the facility or service for which the capital expenditure is
4 proposed is needed and that the obligation of the capital expenditure is consistent with the state health care
5 facilities plan."

6

7 **Section 10.** Section 50-5-309, MCA, is amended to read:

8 "**50-5-309. Exemptions from certificate of need review.** The following are exempt from a
9 certificate of need review: A project proposed by an agency of state government that has been approved
10 by the legislature pursuant to the long range building program under Title 17, chapter 5, part 4, and Title
11 18, chapter 2, part 1, is exempt from certificate of need review

12 (1) construction of a state-owned facility; and

13 (2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil
14 disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the
15 facility's original license issued pursuant to Title 50, chapter 5, part 2."

16

17 **Section 11.** Section 50-5-310, MCA, is amended to read:

18 "**50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

19 (2) An application for certificate of need approval must be accompanied by a fee that is at least
20 equal to 0.3% of either the capital expenditure or the operating expense for the first year as projected in
21 the application, whichever is greater, except that the fee may not be less than \$500.

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

25 ~~(4)~~(3) Fees collected under this section must be deposited in the general fund."

26

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

28 "**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the
29 following definitions apply:

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

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

2 (3) "Department" means the department of public health and human services provided for in
3 2-15-2201.

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

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

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

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

14 (8) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
15 as defined in 7-34-2102.

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

18 (10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this
19 state."
20

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

22 **"50-16-701. Definitions.** As used in this part, the following definitions apply:

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

25 (2) "Department" means the department of public health and human services provided for in
26 2-15-2201.

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

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

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

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

7 (6) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
8 as defined in 7-34-2102.

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

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

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

18

19 **Section 14.** Section 50-60-205, MCA, is amended to read:

20 **"50-60-205. When state building code applies -- health care facility and public health center doors.**

21 (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building
22 code applies within the municipal or county jurisdictional area and the state will enforce the code in these
23 areas.

24 (2) Any provision of a building code requiring the installation or maintenance of self-closing or
25 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
26 50-5-101 or to a public health center as defined in 7-34-2102."

27

28 **Section 15.** Section 50-60-301, MCA, is amended to read:

29 **"50-60-301. Municipal and county building codes authorized -- health care facility and public**
30 **health center doors.** (1) The local legislative body of a municipality or county may adopt a building code

1 by ordinance to apply to the municipal or county jurisdictional area.

2 (2) A municipal or county building code may include only codes adopted by the department.

3 (3) Any provision of a building code requiring the installation or maintenance of self-closing or
4 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
5 50-5-101 or to a public health center as defined in 7-34-2102."

6

7 **Section 16.** Section 50-78-103, MCA, is amended to read:

8 **"50-78-103. Applicability -- exemptions.** (1) The provisions of this chapter do not apply to:

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

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

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

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

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

18 (f) sealed containers of hazardous chemicals:

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

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

24 (2) Employers operating the following workplaces are in compliance with this chapter if they retain
25 and make accessible to employees and, when applicable, to students, all material safety data sheets
26 received or, if no material safety data sheet is received for a hazardous chemical, any other information
27 received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4),
28 and 50-78-305 are met:

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

30 (b) a clinical laboratory or health care facility as defined in 50-5-101;

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

2 (d) a public health center as defined in 7-34-2102; or

3 ~~(d)(e)~~ an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed
4 under Title 37.

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

9

10 **Section 17.** Section 53-6-106, MCA, is amended to read:

11 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
12 53-6-108, the following definitions apply:

13 (a) "Department" means the department of public health and human services.

14 (b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public
15 health center as defined in 7-34-2102.

16 (2) The department may enter into agreements with appropriate federal agencies for the purpose
17 of certifying health care facilities for the Montana medicaid program.

18 (3) The department may adopt rules as necessary to prescribe minimum standards for the
19 maintenance and operation of health care facilities. Standards for the quality of care provided by those
20 facilities receiving reimbursement under the Montana medicaid program must be consistent with those
21 requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C.
22 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code
23 of Federal Regulations, as may be amended. The authority to prescribe standards and adopt rules under
24 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50,
25 chapter 5.

26 (4) Standards adopted by the department may include but are not limited to requirements in the
27 following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation,
28 administration, admission policies, patient care planning, training, medication, health services, rehabilitation
29 services, and social services and activities."

30

1 **Section 18.** Section 53-6-110, MCA, is amended to read:

2 **"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information
3 required in 17-7-111, the department of public health and human services shall submit a report concerning
4 medicaid funding for the next biennium. This report must include at least the following elements:

5 (a) analysis of past and present funding levels for the various categories and types of health
6 services eligible for medicaid reimbursement;

7 (b) projected increased medicaid funding needs for the next biennium. These projections must
8 identify the effects of projected population growth and demographic patterns on at least the following
9 elements:

10 (i) trends in unit costs for services, including inflation;

11 (ii) trends in use of services;

12 (iii) trends in medicaid recipient levels; and

13 (iv) the effects of new and projected facilities and services for which a need has been identified
14 in the state health care facilities plan ~~prepared pursuant to 42 U.S.C. 300m-2(a)(2).~~

15 (2) As an integral part of the report, the department of public health and human services shall
16 present a recommendation of funding levels for the medicaid program. The recommendation need not be
17 consistent with the state health care facilities plan.

18 (3) In making its appropriations for medicaid funding, the legislature shall specify the portions of
19 medicaid funding anticipated to be allocated to specific categories and types of health care services.

20 (4) Whenever the department of public health and human services establishes an estimate of
21 medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative
22 finance committee. The legislative finance committee shall consider the estimate at its next regularly
23 scheduled meeting."
24

25 **Section 19.** Section 90-7-104, MCA, is amended to read:

26 **"90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used
27 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; public health center,
28 as defined in 7-34-2102; center for persons with developmental disabilities; center for the handicapped;
29 chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care
30 facility; or other structure or facility related to any of the foregoing or required or useful for the operation

1 of a health facility. These related facilities include supporting service structures and all necessary, useful,
2 and related equipment, furnishings, and appurtenances and include without limitation the acquisition,
3 preparation, and development of all lands and real and personal property necessary or convenient as a site
4 for any of the foregoing.

5 (2) An eligible health facility does not include such items as food, fuel, supplies, or other items that
6 are customarily considered as current operating expenses; and eligible health facility does not include a
7 structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities
8 or religious worship."

9

10 **NEW SECTION.** **Section 20. Repealer.** Section 50-5-316, MCA, is repealed.

11

12 **NEW SECTION.** **Section 21. Saving clause.** [This act] does not affect rights and duties that
13 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
14 act].

15

16 **NEW SECTION.** **Section 22. Effective date.** [This act] is effective on passage and approval.

17

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0108, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

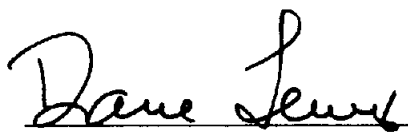
An act generally revising certificate of need statutes; eliminating the certificate of need requirement for residential treatment facilities, medical assistance facilities, mental health centers, major medical equipment, and inpatient mental health care provided by hospitals; deleting the requirement for licensure of public health centers; providing that the statewide Health Coordinating Council is appointed by the director of the Department of Public Health and Human Services; adding a definition of "swing bed"; clarifying when a change in bed capacity requires a certificate of need; deleting the prohibition against requiring a health care facility to obtain a certificate of need for an action that would not be subject to a review if undertaken by a person other than a health care facility; deleting the authority for the adoption of rules governing abbreviated certificate of need review; revising the certificate of need application process; providing that a certificate of need for a project expires when the project is licensed; deleting the requirement that a holder of an unexpired certificate of need report to the department every 6 months; allowing the parties to a reconsideration hearing to agree to an extension of the decision deadline beyond 30 days; exempting from the certificate of need requirement the construction of a state-owned facility and reconstruction of a damaged facility under certain circumstances; revising application and reconsideration hearing fees.

ASSUMPTIONS:

1. There is no fiscal impact on DPHHS Health Policy and Services operations. There will be no reduction of division staff as workloads will diminish only minimally after the elimination of these categories for certificate of need (CON).
2. The elimination of Medical Assistance Facilities as a reviewable item under CON will have no fiscal impact on the Medicaid Program.
3. Under the hospital exemption from CON enacted in 1989, major medical equipment has not been considered a reviewable item under CON. The bill simply clarifies this interpretation. Therefore, there is no fiscal impact due to this change.

FISCAL IMPACT:

None

 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/13/97
EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0108, as introduced

HB 108

1 HOUSE BILL NO. 108

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES;
6 ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES,
7 MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND
8 INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR
9 LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING
10 COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
11 SERVICES; ~~ADDING A DEFINITION OF "SWING BED";~~ CLARIFYING WHEN A CHANGE IN BED CAPACITY
12 REQUIRES A CERTIFICATE OF NEED; ~~DELETING~~ REVISING THE PROHIBITION AGAINST REQUIRING A
13 HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE
14 SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY SO
15 THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION; DELETING THE
16 AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW;
17 REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; ~~PROVIDING THAT A CERTIFICATE OF~~
18 ~~NEED FOR A PROJECT EXPIRES WHEN THE PROJECT IS LICENSED;~~ DELETING THE REQUIREMENT THAT
19 A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS;
20 ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE
21 DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT
22 THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY
23 UNDER CERTAIN CIRCUMSTANCES; ~~REVISING APPLICATION AND~~ DELETING RECONSIDERATION
24 HEARING FEES; AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304,
25 50-5-305, 50-5-306, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301,
26 50-78-103, 53-6-106, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND
27 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

28
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
30

1 **Section 1.** Section 7-34-2102, MCA, is amended to read:

2 **"7-34-2102. Definition.** As used in this part, unless the context requires otherwise, ~~"hospital~~
3 ~~facilities"~~ the following definitions apply:

4 (1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient facilities,
5 ~~public health centers,~~ rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities,
6 all as defined in 50-5-101. The term includes public health centers.

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

9
10 **Section 2.** Section 7-34-2201, MCA, is amended to read:

11 **"7-34-2201. Erection and management of county health care facilities -- definition -- provision of**
12 **health care services.** (1) The board of county commissioners has jurisdiction and power, under the
13 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health
14 care facilities and to provide health care services in those facilities as permitted by law.

15 (2) The board of county commissioners of a county that has or may acquire title to a site and
16 building or buildings suitable for county health care purposes has jurisdiction and power, under the
17 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and
18 operate the building or buildings for health care purposes as provided by this section.

19 (3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise,
20 the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility,
21 a hospice, a kidney treatment center, an outpatient facility, ~~a public health center,~~ a rehabilitation facility,
22 a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as
23 defined in 7-34-2102, or any combination and related medical facilities including offices for physicians or
24 other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

25
26 **Section 3.** Section 50-5-101, MCA, is amended to read:

27 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly
28 indicates otherwise, the following definitions apply:

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

30 (2) "Adult day-care center" means a facility, freestanding or connected to another health care

1 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of
2 daily living but that does not provide overnight care.

3 (3) (a) "Adult foster care home" means a private home that offers light personal care or custodial
4 care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner
5 of the home.

6 (b) As used in this subsection (3), the following definitions apply:

7 (i) "Aged person" means a person as defined by department rule as aged.

8 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled
9 adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person
10 is available to meet those basic needs.

11 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
12 department rule as disabled.

13 (iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
14 personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine
15 administration. The term does not include the administration of prescriptive medications.

16 (4) "Affected person" means an applicant for a certificate of need, a health care facility located
17 in the geographic area affected by the application, an agency that establishes rates for health care facilities,
18 or a third-party payer who reimburses health care facilities in the area affected by the proposal.

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

22 (6) "Capital expenditure" means:

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

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

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

29 (8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
30 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health

1 problems and endangers the health, interpersonal relationships, or economic function of an individual or the
2 public health, welfare, or safety.

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

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

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

13 (12) "Construction" means the physical erection of a health care facility and any stage of the
14 physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health
15 care facility.

16 (13) "Department" means the department of public health and human services provided for in
17 2-15-2201.

18 (14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
19 diseases and includes freestanding hemodialysis units.

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

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

23 (17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
24 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
25 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
26 individual. The term does not include offices of private physicians or dentists. The term includes ambulatory
27 surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance
28 organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries,
29 long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, ~~public~~
30 ~~health centers~~, rehabilitation facilities, residential care facilities, and residential treatment facilities.

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

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

8 (20) "Home infusion therapy agency" means a health care facility that provides home infusion
9 therapy services.

10 (21) "Home infusion therapy services" means the preparation, administration, or furnishing of
11 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's
12 residence. The services include an educational component for the patient, the patient's caregiver, or the
13 patient's family member.

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

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

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

23 (23) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
24 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
25 Services provided may or may not include obstetrical care, emergency care, or any other service allowed
26 by state licensing authority. A hospital has an organized medical staff that is on call and available within
27 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered
28 nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally
29 retarded, and tubercular patients.

30 (24) "Infirmary" means a facility located in a university, college, government institution, or industry

1 for the treatment of the sick or injured, with the following subdefinitions:

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

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

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

8 (26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing
9 care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of
10 two or more individuals or that provides personal care. The term does not include community homes for
11 persons with developmental disabilities licensed under 53-20-305; community homes for persons with
12 severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels,
13 boardinghouses, roominghouses, or similar accommodations providing for transients, students, or
14 individuals who do not require institutional health care; or juvenile and adult correctional facilities operating
15 under the authority of the department of corrections.

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

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

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

24 (e) "Personal care" means the provision of services and care for residents who need some
25 assistance in performing the activities of daily living.

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

29 ~~(28)~~(27) "Medical assistance facility" means a facility that:

30 (a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or

1 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

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

4 ~~(29)~~(28) "Mental health center" means a facility providing services for the prevention or diagnosis
5 of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals,
6 or any combination of these services.

7 ~~(30)~~(29) "Nonprofit health care facility" means a health care facility owned or operated by one or
8 more nonprofit corporations or associations.

9 ~~(31)~~(30) "Observation bed" means a bed occupied by a patient recovering from surgery or other
10 treatment.

11 ~~(32)~~(31) "Offer" means the representation by a health care facility that it can provide specific health
12 services.

13 ~~(33)~~(32) "Outpatient facility" means a facility, located in or apart from a hospital, that provides,
14 under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients
15 in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An
16 ambulatory surgical facility is also an outpatient facility.

17 ~~(34)~~(33) "Patient" means an individual obtaining services, including skilled nursing care, from a
18 health care facility.

19 ~~(35)~~(34) "Person" means an individual, firm, partnership, association, organization, agency,
20 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

21 ~~(36)~~(35) "Personal-care facility" means a facility in which personal care is provided for residents
22 in either a category A facility or a category B facility as provided in 50-5-227.

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

25 ~~(38)~~(36) "Rehabilitation facility" means a facility that is operated for the primary purpose of
26 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and
27 services, psychological and social services, or vocational evaluation and training or any combination of
28 these services and in which the major portion of the services is furnished within the facility.

29 ~~(39)~~(37) "Resident" means an individual who is in a long-term care facility or in a residential care
30 facility.

1 ~~(40)~~(38) "Residential care facility" means an adult day-care center, an adult foster care home, a
2 personal-care facility, or a retirement home.

3 ~~(41)~~(39) "Residential psychiatric care" means active psychiatric treatment provided in a residential
4 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,
5 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or
6 remedy the individual's condition. Residential psychiatric care must be individualized and designed to
7 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

8 ~~(42)~~(40) "Residential treatment facility" means a facility operated for the primary purpose of
9 providing residential psychiatric care to individuals under 21 years of age.

10 ~~(43)~~(41) "Retirement home" means a building or buildings in which separate living accommodations
11 are rented or leased to individuals who use those accommodations as their primary residence.

12 ~~(44)~~(42) "State health care facilities plan" means the plan prepared by the department to project
13 the need for health care facilities within Montana and approved by the ~~statewide health coordinating council~~
14 and the governor and a statewide health coordinating council appointed by the director of the department.

15 ~~(43) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified~~
16 ~~for providing long term care pursuant to 42 CFR 482.66."~~

17

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

19 **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted
20 an application for and is the holder of a certificate of need granted by the department, the person may not
21 initiate any of the following:

22 (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure
23 that exceeds \$1.5 million, other than to acquire an existing health care facility ~~or to replace major medical~~
24 ~~equipment with equipment performing substantially the same function and in the same manner, that~~
25 ~~exceeds the expenditure thresholds established in subsection (4).~~ The costs of any studies, surveys,
26 designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and
27 other services) essential to the acquisition, improvement, expansion, or replacement of any plant ~~or~~
28 ~~equipment~~ with respect to which an expenditure is made must be included in determining if the expenditure
29 exceeds ~~the expenditure thresholds~~ \$1.5 million.

30 (b) a change in the bed capacity of a health care facility through an increase in the number of beds

- 1 or a relocation of beds from one health care facility or site to another, unless:
- 2 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional,
3 rounded down to the nearest whole number, whichever figure is smaller, in any 2-year period and no beds
4 have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is
5 received;
- 6 (ii) a letter of intent is submitted to the department; and
- 7 (iii) the department determines that the proposal will not significantly increase the cost of care
8 provided or exceed the bed need projected in the state health care facilities plan;
- 9 (c) the addition of a health service that is offered by or on behalf of a health care facility that was
10 not offered by or on behalf of the facility within the 12-month period before the month in which the service
11 would be offered and that will result in additional annual operating and amortization expenses of \$150,000
12 or more;
- 13 ~~(d) the acquisition by any person of major medical equipment, provided the acquisition would have~~
14 ~~required a certificate of need pursuant to subsection (1)(a) or (1)(e) if it had been made by or on behalf of~~
15 ~~a health care facility;~~
- 16 ~~(e)(d)~~ the incurring of an obligation for a capital expenditure by any person or persons to acquire
17 50% or more of an existing health care facility unless:
- 18 (i) the person submits the letter of intent required by 50-5-302(2); and
- 19 (ii) the department finds that the acquisition will not significantly increase the cost of care provided
20 or increase bed capacity;
- 21 ~~(f)(e)~~ the construction, development, or other establishment of a health care facility that is being
22 replaced or that did not previously exist, by any person, including another type of health care facility;
- 23 ~~(g)(f)~~ the expansion of the geographical service area of a home health agency;
- 24 ~~(h)(g)~~ the use of hospital beds in excess of five to provide swing bed services to patients or
25 residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental
26 disability care, as those levels of care are defined in 50-5-101; or
- 27 ~~(i)(h)~~ the provision by a hospital of services for ambulatory surgical care, home health care,
28 long-term care, ~~inpatient mental health care~~, inpatient chemical dependency treatment, or inpatient
29 rehabilitation.
- 30 ~~(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated~~

1 ~~beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a~~
 2 ~~certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.~~

3 ~~(3)(2)~~ For purposes of this part, the following definitions apply:

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

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

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

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

15 (ii) The term does not include residential care facilities, as defined in 50-5-101; community homes
 16 for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with
 17 severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under
 18 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for
 19 transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional
 20 facilities operating under the authority of the department of corrections.

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

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

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

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

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

1 (3) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A HEALTH CARE FACILITY TO
 2 OBTAIN A CERTIFICATE OF NEED FOR A NONREVIEWABLE SERVICE THAT WOULD NOT BE SUBJECT
 3 TO A CERTIFICATE OF NEED IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY."
 4

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

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

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

9 (b) the scheduling of reviews;

10 ~~(c) the abbreviated review of a proposal that:~~

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

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

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

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

16 ~~(c)~~ (c) the format of public informational hearings and reconsideration hearings;

17 ~~(d)~~ (d) the circumstances under which applications may be comparatively reviewed; and

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

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

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

26 (4) The department may determine that the proposals should be comparatively reviewed with
 27 similar proposals ~~unless, in the case of beds, the proposal is determined to be exempt from review~~ that are
 28 also subject to review.

29 (5) On the 10th day of each month, the department shall publish in a newspaper of general
 30 circulation in the area to be served by the proposal a description of each letter of intent received by the

1 department during the preceding calendar month. Within 30 days of the publication, any person who
2 desires comparative review with a proposal described in the publication must submit a letter of intent
3 requesting comparative review.

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

7 (7) Within 20 working days after receipt of an application, the department shall determine whether
8 it is complete and, if the application is found incomplete, shall send a written request to the applicant ~~for~~
9 specifying the necessary additional information and a date by which the additional information must be
10 submitted to the department. The department shall allow at least 15 days after the mailing of its written
11 request for the submission of the additional information. Upon receipt of the additional information from
12 the applicant, the department ~~shall have~~ has an additional 15 working days to determine if the application
13 is complete and, if the application is still incomplete, to send a notice to the applicant that the application
14 is ~~complete or~~ incomplete.

15 (8) ~~If a proposal is to undergo comparative review with another proposal but~~ the applicant fails to
16 submit the necessary additional information requested by the department by the deadline prescribed by the
17 ~~department rules,~~ the application is considered withdrawn.

18 (9) If the department fails to send ~~the notices~~ either the request for additional information or the
19 notice of incompleteness required by subsection (7) within the ~~periods~~ period prescribed in subsection (7),
20 the application is considered to be complete on the last day of the time period during which the notice
21 should have been sent.

22 (10) The review period for an application may be no longer than 90 calendar days after the
23 application is initially received or, if the application is to be comparatively reviewed as provided in
24 subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer
25 period is permitted with the consent of all affected applicants.

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

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

30 (13) The department shall, after considering all comments received during the review period, issue

1 a certificate of need, with or without conditions, or deny the application. The department shall notify the
2 applicant and affected persons of its decision within 5 working days after expiration of the review period.

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

7
8 **Section 6.** Section 50-5-304, MCA, is amended to read:

9 **"50-5-304. Review criteria, required findings, and standards.** The department shall by rule
10 promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this
11 chapter, including but not limited to the following considerations and required findings:

12 (1) the degree to which the proposal being reviewed:

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

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

18 (c) is consistent with the current state health care facilities plan;

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) other appropriate factors."
13

14 **Section 7.** Section 50-5-305, MCA, is amended to read:

15 **"50-5-305. Period of validity of approved application.** (1) ~~Unless an extension is granted pursuant~~
16 ~~to subsection (3), a~~ A certificate of need ~~shall expire~~ expires:

17 (a) 1 year after the decision to issue it is final if the applicant has not commenced construction on
18 a project requiring construction or has not incurred an enforceable capital expenditure commitment for a
19 project not requiring construction;

20 (b) 1 year after the date the project is commenced plus the estimated period of time for completion
21 shown in the application if the approved project is not complete; ~~or~~ OR

22 (c) when the department determines, after opportunity for a hearing, that the holder of the
23 certificate of need has violated the provisions of this chapter, rules adopted ~~hereunder~~ under this chapter,
24 or the terms of the certificate of need; ~~or~~

25 ~~(d) on the date that the project for which the certificate of need was granted is first licensed by~~
26 the department.

27 (2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under
28 50-5-306, the final decision will be that following the hearing or resolving the appeal.

29 (3) The holder of an unexpired certificate of need subject to expiration under the circumstances
30 specified in subsection (1)(a) or (1)(b) may apply to the department to extend the term of the certificate

1 of need for one additional period not to exceed 6 months. The department may grant ~~such~~ an extension
2 upon the applicant's demonstrating good cause as defined by department rule.

3 ~~(4) The holder of an unexpired certificate of need shall report to the department in writing on the~~
4 ~~status of his project at the end of each 6 month period after being granted a certificate of need until~~
5 ~~completion of the project for which the certificate of need was issued."~~

6
7 **Section 8.** Section 50-5-306, MCA, is amended to read:

8 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request a contested case
9 hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with
10 the department within 30 days after receipt of the notification required in 50-5-302(13). The written
11 request for a hearing must include:

12 (a) a statement describing each finding and conclusion in the department's initial decision that will
13 be contested at the hearing and why each finding and conclusion is objectionable or in error; and

14 (b) a summary of the evidence that will be submitted to contest the findings and conclusion
15 identified in subsection (1)(a).

16 (2) The hearing must be limited to the issues identified under subsection (1) and any other issues
17 identified through discovery.

18 (3) The public hearing must be held within 30 calendar days after the request is received unless
19 the hearing examiner extends the time limit for good cause.

20 (4) The department shall make its final decision and serve the appellant with written findings of
21 fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing
22 unless the parties to the hearing agree to a different date.

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

25 (6) On application by a person whose proposal has been approved under the procedure provided
26 for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the
27 successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines
28 that the reasons for requesting the contested case hearing were frivolous.

29 (7) The department may by rule prescribe in greater detail the hearing and appellate procedures."
30

1 **Section 9.** Section 50-5-308, MCA, is amended to read:

2 **"50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed
3 capital expenditure if:

4 (1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined
5 by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure,
6 certification, or accreditation standards; and

7 (2) the department has determined that the facility or service for which the capital expenditure is
8 proposed is needed and that the obligation of the capital expenditure is consistent with the state health care
9 facilities plan."

10

11 **Section 10.** Section 50-5-309, MCA, is amended to read:

12 **"50-5-309. Exemptions from certificate of need review.** The following are exempt from a
13 certificate of need review: A project proposed by an agency of state government that has been approved
14 by the legislature pursuant to the long range building program under Title 17, chapter 5, part 4, and Title
15 18, chapter 2, part 1, is exempt from certificate of need review

16 (1) construction of a state-owned facility; and

17 (2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil
18 disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the
19 facility's original license issued pursuant to Title 50, chapter 5, part 2."

20

21 **Section 11.** Section 50-5-310, MCA, is amended to read:

22 **"50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

23 (2) An application for certificate of need approval must be accompanied by a fee that is at least
24 equal to 0.3% of ~~either the capital expenditure or the operating expense for the first year as~~ projected in
25 the application, ~~whichever is greater,~~ except that the fee may not be less than \$500.

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

29 ~~(4)~~(3) Fees collected under this section must be deposited in the general fund."

30

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

2 **"50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the
3 following definitions apply:

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

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

6 (3) "Department" means the department of public health and human services provided for in
7 2-15-2201.

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

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

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

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

18 (8) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
19 as defined in 7-34-2102.

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

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

24

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

26 **"50-16-701. Definitions.** As used in this part, the following definitions apply:

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

29 (2) "Department" means the department of public health and human services provided for in
30 2-15-2201.

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

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

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

11 (6) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
12 as defined in 7-34-2102.

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

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

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

22

23 **Section 14.** Section 50-60-205, MCA, is amended to read:

24 **"50-60-205. When state building code applies -- health care facility and public health center doors.**

25 (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building
26 code applies within the municipal or county jurisdictional area and the state will enforce the code in these
27 areas.

28 (2) Any provision of a building code requiring the installation or maintenance of self-closing or
29 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
30 50-5-101 or to a public health center as defined in 7-34-2102."

1 **Section 15.** Section 50-60-301, MCA, is amended to read:

2 **"50-60-301. Municipal and county building codes authorized -- health care facility and public**
3 **health center doors.** (1) The local legislative body of a municipality or county may adopt a building code
4 by ordinance to apply to the municipal or county jurisdictional area.

5 (2) A municipal or county building code may include only codes adopted by the department.

6 (3) Any provision of a building code requiring the installation or maintenance of self-closing or
7 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
8 50-5-101 or to a public health center as defined in 7-34-2102."

9
10 **Section 16.** Section 50-78-103, MCA, is amended to read:

11 **"50-78-103. Applicability -- exemptions.** (1) The provisions of this chapter do not apply to:

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

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

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

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

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

21 (f) sealed containers of hazardous chemicals:

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

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

27 (2) Employers operating the following workplaces are in compliance with this chapter if they retain
28 and make accessible to employees and, when applicable, to students, all material safety data sheets
29 received or, if no material safety data sheet is received for a hazardous chemical, any other information
30 received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4),

1 and 50-78-305 are met:

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

3 (b) a clinical laboratory or health care facility as defined in 50-5-101;

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

5 (d) a public health center as defined in 7-34-2102; or

6 ~~(d)~~(e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed
7 under Title 37.

8 (3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging
9 and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.
10 136, et seq., except that a chemical manufacturer producing ~~such~~ the hazardous chemicals must comply
11 with all provisions of this chapter."

12

13 **Section 17.** Section 53-6-106, MCA, is amended to read:

14 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
15 53-6-108, the following definitions apply:

16 (a) "Department" means the department of public health and human services.

17 (b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public
18 health center as defined in 7-34-2102.

19 (2) The department may enter into agreements with appropriate federal agencies for the purpose
20 of certifying health care facilities for the Montana medicaid program.

21 (3) The department may adopt rules as necessary to prescribe minimum standards for the
22 maintenance and operation of health care facilities. Standards for the quality of care provided by those
23 facilities receiving reimbursement under the Montana medicaid program must be consistent with those
24 requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C.
25 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code
26 of Federal Regulations, as may be amended. The authority to prescribe standards and adopt rules under
27 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50,
28 chapter 5.

29 (4) Standards adopted by the department may include but are not limited to requirements in the
30 following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation,

1 administration, admission policies, patient care planning, training, medication, health services, rehabilitation
2 services, and social services and activities."

3
4 **Section 18.** Section 53-6-110, MCA, is amended to read:

5 **"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information
6 required in 17-7-111, the department of public health and human services shall submit a report concerning
7 medicaid funding for the next biennium. This report must include at least the following elements:

8 (a) analysis of past and present funding levels for the various categories and types of health
9 services eligible for medicaid reimbursement;

10 (b) projected increased medicaid funding needs for the next biennium. These projections must
11 identify the effects of projected population growth and demographic patterns on at least the following
12 elements:

13 (i) trends in unit costs for services, including inflation;

14 (ii) trends in use of services;

15 (iii) trends in medicaid recipient levels; and

16 (iv) the effects of new and projected facilities and services for which a need has been identified
17 in the state health care facilities plan ~~prepared pursuant to 42 U.S.C. 300m-2(a)(2).~~

18 (2) As an integral part of the report, the department of public health and human services shall
19 present a recommendation of funding levels for the medicaid program. The recommendation need not be
20 consistent with the state health care facilities plan.

21 (3) In making its appropriations for medicaid funding, the legislature shall specify the portions of
22 medicaid funding anticipated to be allocated to specific categories and types of health care services.

23 (4) Whenever the department of public health and human services establishes an estimate of
24 medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative
25 finance committee. The legislative finance committee shall consider the estimate at its next regularly
26 scheduled meeting."

27
28 **Section 19.** Section 90-7-104, MCA, is amended to read:

29 **"90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used
30 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; public health center,

1 as defined in 7-34-2102; center for persons with developmental disabilities; center for the handicapped;
2 chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care
3 facility; or other structure or facility related to any of the foregoing or required or useful for the operation
4 of a health facility. These related facilities include supporting service structures and all necessary, useful,
5 and related equipment, furnishings, and appurtenances and include without limitation the acquisition,
6 preparation, and development of all lands and real and personal property necessary or convenient as a site
7 for any of the foregoing.

8 (2) An eligible health facility does not include such items as food, fuel, supplies, or other items that
9 are customarily considered as current operating expenses; and eligible health facility does not include a
10 structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities
11 or religious worship."

12

13 **NEW SECTION. Section 20. Repealer.** Section 50-5-316, MCA, is repealed.

14

15 **NEW SECTION. Section 21. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].

18

19 **NEW SECTION. Section 22. Effective date.** [This act] is effective on passage and approval.

20

-END-

1 HOUSE BILL NO. 108

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES;
6 ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES,
7 MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND
8 INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR
9 LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING
10 COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
11 SERVICES; ~~ADDING A DEFINITION OF "SWING BED";~~ CLARIFYING WHEN A CHANGE IN BED CAPACITY
12 REQUIRES A CERTIFICATE OF NEED; ~~DELETING~~ REVISING THE PROHIBITION AGAINST REQUIRING A
13 HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE
14 SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY SO
15 THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION; DELETING THE
16 AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW;

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

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8 INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR
9 LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING
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6 ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES,
7 MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND
8 INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR
9 LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING
10 COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
11 SERVICES; ~~ADDING A DEFINITION OF "SWING BED";~~ CLARIFYING WHEN A CHANGE IN BED CAPACITY
12 REQUIRES A CERTIFICATE OF NEED; ~~DELETING~~ REVISING THE PROHIBITION AGAINST REQUIRING A
13 HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE
14 SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY SO
15 THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION; DELETING THE
16 AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW;
17 REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; ~~PROVIDING THAT A CERTIFICATE OF~~
18 ~~NEED FOR A PROJECT EXPIRES WHEN THE PROJECT IS LICENSED;~~ DELETING THE REQUIREMENT THAT
19 A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS;
20 ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE
21 DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT
22 THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY
23 UNDER CERTAIN CIRCUMSTANCES; ~~REVISING APPLICATION AND~~ DELETING RECONSIDERATION
24 HEARING FEES; AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304,
25 50-5-305, 50-5-308, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301,
26 50-78-103, 53-6-108, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND
27 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

28
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
30

1 **Section 1.** Section 7-34-2102, MCA, is amended to read:

2 **"7-34-2102. Definition.** As used in this part, unless the context requires otherwise, "~~hospital~~
3 ~~facilities~~" the following definitions apply:

4 (1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient facilities,
5 ~~public health centers~~, rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities,
6 all as defined in 50-5-101. The term includes public health centers.

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

9

10 **Section 2.** Section 7-34-2201, MCA, is amended to read:

11 **"7-34-2201. Erection and management of county health care facilities -- definition -- provision of**
12 **health care services.** (1) The board of county commissioners has jurisdiction and power, under the
13 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health
14 care facilities and to provide health care services in those facilities as permitted by law.

15 (2) The board of county commissioners of a county that has or may acquire title to a site and
16 building or buildings suitable for county health care purposes has jurisdiction and power, under the
17 limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and
18 operate the building or buildings for health care purposes as provided by this section.

19 (3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise,
20 the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility,
21 a hospice, a kidney treatment center, an outpatient facility, ~~a public health center~~, a rehabilitation facility,
22 a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as
23 defined in 7-34-2102, or any combination and related medical facilities including offices for physicians or
24 other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

25

26 **Section 3.** Section 50-5-101, MCA, is amended to read:

27 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly
28 indicates otherwise, the following definitions apply:

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

30 (2) "Adult day-care center" means a facility, freestanding or connected to another health care

1 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of
2 daily living but that does not provide overnight care.

3 (3) (a) "Adult foster care home" means a private home that offers light personal care or custodial
4 care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner
5 of the home.

6 (b) As used in this subsection (3), the following definitions apply:

7 (i) "Aged person" means a person as defined by department rule as aged.

8 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled
9 adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person
10 is available to meet those basic needs.

11 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
12 department rule as disabled.

13 (iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
14 personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine
15 administration. The term does not include the administration of prescriptive medications.

16 (4) "Affected person" means an applicant for a certificate of need, a health care facility located
17 in the geographic area affected by the application, an agency that establishes rates for health care facilities,
18 or a third-party payer who reimburses health care facilities in the area affected by the proposal.

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

22 (6) "Capital expenditure" means:

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

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

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

29 (8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
30 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health

1 problems and endangers the health, interpersonal relationships, or economic function of an individual or the
2 public health, welfare, or safety.

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

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

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

13 (12) "Construction" means the physical erection of a health care facility and any stage of the
14 physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health
15 care facility.

16 (13) "Department" means the department of public health and human services provided for in
17 2-15-2201.

18 (14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
19 diseases and includes freestanding hemodialysis units.

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

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

23 (17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
24 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
25 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
26 individual. The term does not include offices of private physicians or dentists. The term includes ambulatory
27 surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance
28 organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries,
29 long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, ~~public~~
30 ~~health centers~~, rehabilitation facilities, residential care facilities, and residential treatment facilities.

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

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

8 (20) "Home infusion therapy agency" means a health care facility that provides home infusion
9 therapy services.

10 (21) "Home infusion therapy services" means the preparation, administration, or furnishing of
11 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's
12 residence. The services include an educational component for the patient, the patient's caregiver, or the
13 patient's family member.

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

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

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

23 (23) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
24 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
25 Services provided may or may not include obstetrical care, emergency care, or any other service allowed
26 by state licensing authority. A hospital has an organized medical staff that is on call and available within
27 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered
28 nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally
29 retarded, and tubercular patients.

30 (24) "Infirmiry" means a facility located in a university, college, government institution, or industry

1 for the treatment of the sick or injured, with the following subdefinitions:

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

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

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

8 (26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing
9 care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of
10 two or more individuals or that provides personal care. The term does not include community homes for
11 persons with developmental disabilities licensed under 53-20-305; community homes for persons with
12 severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels,
13 boardinghouses, roominghouses, or similar accommodations providing for transients, students, or
14 individuals who do not require institutional health care; or juvenile and adult correctional facilities operating
15 under the authority of the department of corrections.

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

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

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

24 (e) "Personal care" means the provision of services and care for residents who need some
25 assistance in performing the activities of daily living.

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

29 ~~(28)~~(27) "Medical assistance facility" means a facility that:

30 (a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or

1 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

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

4 ~~(29)~~(28) "Mental health center" means a facility providing services for the prevention or diagnosis
5 of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals,
6 or any combination of these services.

7 ~~(30)~~(29) "Nonprofit health care facility" means a health care facility owned or operated by one or
8 more nonprofit corporations or associations.

9 ~~(31)~~(30) "Observation bed" means a bed occupied by a patient recovering from surgery or other
10 treatment.

11 ~~(32)~~(31) "Offer" means the representation by a health care facility that it can provide specific health
12 services.

13 ~~(33)~~(32) "Outpatient facility" means a facility, located in or apart from a hospital, that provides,
14 under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients
15 in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An
16 ambulatory surgical facility is also an outpatient facility.

17 ~~(34)~~(33) "Patient" means an individual obtaining services, including skilled nursing care, from a
18 health care facility.

19 ~~(35)~~(34) "Person" means an individual, firm, partnership, association, organization, agency,
20 institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

21 ~~(36)~~(35) "Personal-care facility" means a facility in which personal care is provided for residents
22 in either a category A facility or a category B facility as provided in 50-5-227.

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

25 ~~(38)~~(36) "Rehabilitation facility" means a facility that is operated for the primary purpose of
26 assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and
27 services, psychological and social services, or vocational evaluation and training or any combination of
28 these services and in which the major portion of the services is furnished within the facility.

29 ~~(39)~~(37) "Resident" means an individual who is in a long-term care facility or in a residential care
30 facility.

1 ~~(40)~~(38) "Residential care facility" means an adult day-care center, an adult foster care home, a
2 personal-care facility, or a retirement home.

3 ~~(41)~~(39) "Residential psychiatric care" means active psychiatric treatment provided in a residential
4 treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological,
5 or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or
6 remedy the individual's condition. Residential psychiatric care must be individualized and designed to
7 achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

8 ~~(42)~~(40) "Residential treatment facility" means a facility operated for the primary purpose of
9 providing residential psychiatric care to individuals under 21 years of age.

10 ~~(43)~~(41) "Retirement home" means a building or buildings in which separate living accommodations
11 are rented or leased to individuals who use those accommodations as their primary residence.

12 ~~(44)~~(42) "State health care facilities plan" means the plan prepared by the department to project
13 the need for health care facilities within Montana and approved by the ~~statewide health coordinating council~~
14 ~~and the governor and a statewide health coordinating council appointed by the director of the department.~~

15 ~~(43) "Swing bed" means a licensed hospital or medical assistance facility bed that is also certified~~
16 ~~for providing long term care pursuant to 42 CFR 482.66."~~

17

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

19 **"50-5-301. When certificate of need is required -- definitions.** (1) Unless a person has submitted
20 an application for and is the holder of a certificate of need granted by the department, the person may not
21 initiate any of the following:

22 (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure
23 that exceeds \$1.5 million, other than to acquire an existing health care facility ~~or to replace major medical~~
24 ~~equipment with equipment performing substantially the same function and in the same manner, that~~
25 ~~exceeds the expenditure thresholds established in subsection (4).~~ The costs of any studies, surveys,
26 designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and
27 other services) essential to the acquisition, improvement, expansion, or replacement of any plant ~~or~~
28 ~~equipment~~ with respect to which an expenditure is made must be included in determining if the expenditure
29 exceeds ~~the expenditure thresholds~~ \$1.5 million.

30 (b) a change in the bed capacity of a health care facility through an increase in the number of beds

1 or a relocation of beds from one health care facility or site to another, unless:

2 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional,
3 rounded down to the nearest whole number, whichever figure is smaller, ~~in any 2-year period and no beds~~
4 have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is
5 received;

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

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

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

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

16 ~~(e)(d)~~ the incurring of an obligation for a capital expenditure by any person or persons to acquire
17 50% or more of an existing health care facility unless:

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

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

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

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

24 ~~(h)(g)~~ the use of hospital beds in excess of five to provide swing bed services to patients or
25 residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental
26 disability care, as those levels of care are defined in 50-5-101; or

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

30 ~~(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated~~

1 ~~beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a~~
2 ~~certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.~~

3 ~~(3)(2)~~ For purposes of this part, the following definitions apply:

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

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

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

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

15 (ii) The term does not include residential care facilities, as defined in 50-5-101; community homes
16 for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with
17 severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under
18 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for
19 transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional
20 facilities operating under the authority of the department of corrections.

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

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

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

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

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

1 (3) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE A HEALTH CARE FACILITY TO
 2 OBTAIN A CERTIFICATE OF NEED FOR A NONREVIEWABLE SERVICE THAT WOULD NOT BE SUBJECT
 3 TO A CERTIFICATE OF NEED IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY."

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

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

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

9 (b) the scheduling of reviews;

10 ~~(c) the abbreviated review of a proposal that:~~

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

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

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

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

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

17 ~~(e)(d)~~ the circumstances under which applications may be comparatively reviewed; and

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

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

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

26 (4) The department may determine that the proposals should be comparatively reviewed with
 27 similar proposals ~~unless, in the case of beds, the proposal is determined to be exempt from review~~ that are
 28 also subject to review.

29 (5) On the 10th day of each month, the department shall publish in a newspaper of general
 30 circulation in the area to be served by the proposal a description of each letter of intent received by the

1 department during the preceding calendar month. Within 30 days of the publication, any person who
2 desires comparative review with a proposal described in the publication must submit a letter of intent
3 requesting comparative review.

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

7 (7) Within 20 working days after receipt of an application, the department shall determine whether
8 it is complete and, if the application is found incomplete, shall send a written request to the applicant ~~for~~
9 specifying the necessary additional information and a date by which the additional information must be
10 submitted to the department. The department shall allow at least 15 days after the mailing of its written
11 request for the submission of the additional information. Upon receipt of the additional information from
12 the applicant, the department ~~shall have~~ has an additional 15 working days to determine if the application
13 is complete and, if the application is still incomplete, to send a notice to the applicant that the application
14 is ~~complete or~~ incomplete.

15 (8) ~~If a proposal is to undergo comparative review with another proposal but~~ the applicant fails to
16 submit the necessary additional information requested by the department by the deadline prescribed by the
17 ~~department rules,~~ the application is considered withdrawn.

18 (9) If the department fails to send ~~the notices~~ either the request for additional information or the
19 notice of incompleteness required by subsection (7) within the ~~period~~ period prescribed in subsection (7),
20 the application is considered to be complete on the last day of the time period during which the notice
21 should have been sent.

22 (10) The review period for an application may be no longer than 90 calendar days after the
23 application is initially received or, if the application is to be comparatively reviewed as provided in
24 subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer
25 period is permitted with the consent of all affected applicants.

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

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

30 (13) The department shall, after considering all comments received during the review period, issue

1 a certificate of need, with or without conditions, or deny the application. The department shall notify the
2 applicant and affected persons of its decision within 5 working days after expiration of the review period.

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

7

8 **Section 6.** Section 50-5-304, MCA, is amended to read:

9 **"50-5-304. Review criteria, required findings, and standards.** The department shall by rule
10 promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this
11 chapter, including but not limited to the following considerations and required findings:

12 (1) the degree to which the proposal being reviewed:

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

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

18 (c) is consistent with the current state health care facilities plan;

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) other appropriate factors."

13
14 **Section 7.** Section 50-5-305, MCA, is amended to read:

15 **"50-5-305. Period of validity of approved application.** (1) ~~Unless an extension is granted pursuant~~
16 ~~to subsection (3), a~~ A certificate of need shall expire expires:

17 (a) 1 year after the decision to issue it is final if the applicant has not commenced construction on
18 a project requiring construction or has not incurred an enforceable capital expenditure commitment for a
19 project not requiring construction;

20 (b) 1 year after the date the project is commenced plus the estimated period of time for completion
21 shown in the application if the approved project is not complete; ~~or~~ OR

22 (c) when the department determines, after opportunity for a hearing, that the holder of the
23 certificate of need has violated the provisions of this chapter, rules adopted ~~hereunder~~ under this chapter,
24 or the terms of the certificate of need; ~~or~~

25 ~~(d) on the date that the project for which the certificate of need was granted is first licensed by~~
26 ~~the department.~~

27 (2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under
28 50-5-306, the final decision will be that following the hearing or resolving the appeal.

29 (3) The holder of an unexpired certificate of need subject to expiration under the circumstances
30 specified in subsection (1)(a) or (1)(b) may apply to the department to extend the term of the certificate

1 of need for one additional period not to exceed 6 months. The department may grant ~~such~~ an extension
2 upon the applicant's demonstrating good cause as defined by department rule.

3 ~~(4) The holder of an unexpired certificate of need shall report to the department in writing on the~~
4 ~~status of his project at the end of each 6 month period after being granted a certificate of need until~~
5 ~~completion of the project for which the certificate of need was issued."~~

6

7 **Section 8.** Section 50-5-306, MCA, is amended to read:

8 **"50-5-306. Right to hearing and appeal.** (1) An affected person may request a contested case
9 hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with
10 the department within 30 days after receipt of the notification required in 50-5-302(13). The written
11 request for a hearing must include:

12 (a) a statement describing each finding and conclusion in the department's initial decision that will
13 be contested at the hearing and why each finding and conclusion is objectionable or in error; and

14 (b) a summary of the evidence that will be submitted to contest the findings and conclusion
15 identified in subsection (1)(a).

16 (2) The hearing must be limited to the issues identified under subsection (1) and any other issues
17 identified through discovery.

18 (3) The public hearing must be held within 30 calendar days after the request is received unless
19 the hearings examiner extends the time limit for good cause.

20 (4) The department shall make its final decision and serve the appellant with written findings of
21 fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing
22 unless the parties to the hearing agree to a different date.

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

25 (6) On application by a person whose proposal has been approved under the procedure provided
26 for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the
27 successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines
28 that the reasons for requesting the contested case hearing were frivolous.

29 (7) The department may by rule prescribe in greater detail the hearing and appellate procedures."
30

1 **Section 9.** Section 50-5-308, MCA, is amended to read:

2 **"50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed
3 capital expenditure if:

4 (1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined
5 by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure,
6 certification, or accreditation standards; and

7 (2) the department has determined that the facility or service for which the capital expenditure is
8 proposed is needed and that the obligation of the capital expenditure is consistent with the state health care
9 facilities plan."

10

11 **Section 10.** Section 50-5-309, MCA, is amended to read:

12 **"50-5-309. Exemptions from certificate of need review.** The following are exempt from a
13 certificate of need review: A project proposed by an agency of state government that has been approved
14 by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title
15 18, chapter 2, part 1, is exempt from certificate of need review

16 (1) construction of a state-owned facility; and

17 (2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil
18 disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the
19 facility's original license issued pursuant to Title 50, chapter 5, part 2."

20

21 **Section 11.** Section 50-5-310, MCA, is amended to read:

22 **"50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

23 (2) An application for certificate of need approval must be accompanied by a fee that is at least
24 equal to 0.3% of ~~either the capital expenditure or the operating expense for the first year as~~ projected in
25 the application, ~~whichever is greater,~~ except that the fee may not be less than \$500.

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

29 ~~(4)~~(3) Fees collected under this section must be deposited in the general fund."

30

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

2 **"50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the
3 following definitions apply:

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

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

6 (3) "Department" means the department of public health and human services provided for in
7 2-15-2201.

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

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

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

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

18 (8) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
19 as defined in 7-34-2102.

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

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

24

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

26 **"50-16-701. Definitions.** As used in this part, the following definitions apply:

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

29 (2) "Department" means the department of public health and human services provided for in
30 2-15-2201.

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

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

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

11 (6) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center
12 as defined in 7-34-2102.

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

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

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

22

23 **Section 14.** Section 50-60-205, MCA, is amended to read:

24 **"50-60-205. When state building code applies -- health care facility and public health center doors.**

25 (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building
26 code applies within the municipal or county jurisdictional area and the state will enforce the code in these
27 areas.

28 (2) Any provision of a building code requiring the installation or maintenance of self-closing or
29 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
30 50-5-101 or to a public health center as defined in 7-34-2102."

1 **Section 15.** Section 50-60-301, MCA, is amended to read:

2 **"50-60-301. Municipal and county building codes authorized -- health care facility and public**
3 **health center doors.** (1) The local legislative body of a municipality or county may adopt a building code
4 by ordinance to apply to the municipal or county jurisdictional area.

5 (2) A municipal or county building code may include only codes adopted by the department.

6 (3) Any provision of a building code requiring the installation or maintenance of self-closing or
7 automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in
8 50-5-101 or to a public health center as defined in 7-34-2102."

9

10 **Section 16.** Section 50-78-103, MCA, is amended to read:

11 **"50-78-103. Applicability -- exemptions.** (1) The provisions of this chapter do not apply to:

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

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

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

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

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

21 (f) sealed containers of hazardous chemicals:

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

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

27 (2) Employers operating the following workplaces are in compliance with this chapter if they retain
28 and make accessible to employees and, when applicable, to students, all material safety data sheets
29 received or, if no material safety data sheet is received for a hazardous chemical, any other information
30 received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4),

1 and 50-78-305 are met:

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

3 (b) a clinical laboratory or health care facility as defined in 50-5-101;

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

5 (d) a public health center as defined in 7-34-2102; or

6 ~~(e)~~ (e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed
7 under Title 37.

8 (3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging
9 and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.
10 136, et seq., except that a chemical manufacturer producing ~~such~~ the hazardous chemicals must comply
11 with all provisions of this chapter."

12

13 **Section 17. Section 53-6-106, MCA, is amended to read:**

14 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
15 53-6-108, the following definitions apply:

16 (a) "Department" means the department of public health and human services.

17 (b) "Health care facility" means a health care facility as defined in 50-5-101 and includes a public
18 health center as defined in 7-34-2102.

19 (2) The department may enter into agreements with appropriate federal agencies for the purpose
20 of certifying health care facilities for the Montana medicaid program.

21 (3) The department may adopt rules as necessary to prescribe minimum standards for the
22 maintenance and operation of health care facilities. Standards for the quality of care provided by those
23 facilities receiving reimbursement under the Montana medicaid program must be consistent with those
24 requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C.
25 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code
26 of Federal Regulations, as may be amended. The authority to prescribe standards and adopt rules under
27 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50,
28 chapter 5.

29 (4) Standards adopted by the department may include but are not limited to requirements in the
30 following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation,

1 administration, admission policies, patient care planning, training, medication, health services, rehabilitation
2 services, and social services and activities."

3

4 **Section 18.** Section 53-6-110, MCA, is amended to read:

5 **"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information
6 required in 17-7-111, the department of public health and human services shall submit a report concerning
7 medicaid funding for the next biennium. This report must include at least the following elements:

8 (a) analysis of past and present funding levels for the various categories and types of health
9 services eligible for medicaid reimbursement;

10 (b) projected increased medicaid funding needs for the next biennium. These projections must
11 identify the effects of projected population growth and demographic patterns on at least the following
12 elements:

13 (i) trends in unit costs for services, including inflation;

14 (ii) trends in use of services;

15 (iii) trends in medicaid recipient levels; and

16 (iv) the effects of new and projected facilities and services for which a need has been identified
17 in the state health care facilities plan ~~prepared pursuant to 42 U.S.C. 300m 2(a)(2).~~

18 (2) As an integral part of the report, the department of public health and human services shall
19 present a recommendation of funding levels for the medicaid program. The recommendation need not be
20 consistent with the state health care facilities plan.

21 (3) In making its appropriations for medicaid funding, the legislature shall specify the portions of
22 medicaid funding anticipated to be allocated to specific categories and types of health care services.

23 (4) Whenever the department of public health and human services establishes an estimate of
24 medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative
25 finance committee. The legislative finance committee shall consider the estimate at its next regularly
26 scheduled meeting."

27

28 **Section 19.** Section 90-7-104, MCA, is amended to read:

29 **"90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used
30 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; public health center,

1 as defined in 7-34-2102; center for persons with developmental disabilities; center for the handicapped;
2 chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care
3 facility; or other structure or facility related to any of the foregoing or required or useful for the operation
4 of a health facility. These related facilities include supporting service structures and all necessary, useful,
5 and related equipment, furnishings, and appurtenances and include without limitation the acquisition,
6 preparation, and development of all lands and real and personal property necessary or convenient as a site
7 for any of the foregoing.

8 (2) An eligible health facility does not include such items as food, fuel, supplies, or other items that
9 are customarily considered as current operating expenses; and eligible health facility does not include a
10 structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities
11 or religious worship."
12

13 **NEW SECTION. Section 20. Repealer.** Section 50-5-316, MCA, is repealed.
14

15 **NEW SECTION. Section 21. Saving clause.** [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].
18

19 **NEW SECTION. Section 22. Effective date.** [This act] is effective on passage and approval.
20

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