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SENATE PUBLIC HEALTH, WELFARE & SAFETY

EXHIBIT NO. 2

DATE: 1-28-05

BILL NO. SB257

SENATE BILL 257

TO CLARIFY CERTIFICATE OF NEED APPLICATION TO CRITICAL ACCESS HOSPITAL SWING BEDS

Current Law provides:

A long-term care facility is a health care facility subject to certificate of need (CON).
[50-5-301(2)(a)]

A hospital is exempt from certificate of need, except to the extent that it provides home health care, long-term care, or inpatient chemical dependency treatment. [50-5-301(1)(h)]

A long-term care facility is "an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals." [50-5-301(2)(b)]

The use of *hospital* beds in excess of 5 to provide services to those needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care is subject to certificate of need. [50-5-301(1)(g)] Hospital beds used for long-term care are commonly referred to as "swing beds."

The current law does not specifically exempt "critical access hospitals" from certificate of need.

Issue being addressed:

Federal and state law allow for hospitals to seek the "critical access hospital" (CAH) designation. This designation allows CAH's flexibility in the way they do business and provides payment at 101% of costs. This designation has proven to be beneficial to our small rural facilities financially.

Under federal law "critical access hospitals" are allowed to provide "skilled nursing care" (long-term care) in "swing beds" – similar to how "hospitals" are allowed to provide

skilled nursing care in swing beds.

We believe that to the extent a critical access hospital “provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101,” it meets the definition of a long term care facility under 50-5-301(2)(b) and a health care facility subject to certificate of need under 50-5-301(2)(a).

However, a question has arisen about :

- whether a CAH that provides skilled nursing care in a swing bed is a long term care facility subject to the CON law;
- whether the hospital exemption from CON applies to CAH’s;
- whether CAH swing beds are treated the same as hospital swing beds for CON purposes; and
- whether a CAH, like a hospital, is required to obtain a CON in order to offer skilled nursing care, intermediate nursing care, intermediate developmental disability care, home health care, long-term care, or inpatient chemical dependency treatment.

Senate Bill 257:

Senate Bill 257 is brought to resolve these issues. It clarifies:

- CAH’s, like hospitals, are specifically exempt from the definition of health care facilities subject to CON;
- CAH swing beds will be treated the same as hospital swing beds for CON purposes—i.e., swing beds in excess of 5 will require a certificate of need;
- CAH’s, like hospitals, will be required to obtain a certificate of need to offer or expand those services for which a certificate of need is required of other entities—i.e., home health care, long-term care, inpatient chemical dependency treatment, skilled nursing care, intermediate nursing care, intermediate developmental disability care.

Senate Bill 257 provides additional flexibility to critical access hospitals by allowing the conversion of licensed long-term care beds to critical access hospital swing beds without a certificate of need – if the conversion does not add to the total number of long term care beds in a community.

What happens if CAH’s are NOT required to seek certificate of need before adding long term care beds to a community?

Up to 750 new CAH swing beds could be added to communities that already have too many beds. Regularly licensed beds currently licensed swing beds total 2,776 in the communities with licensed CAH’s. The long term care State Plan projections for bed need for these same communities is 2,310. So, there is already a surplus of 466 beds in these

communities - with the potential to increase the over-bedding by an additional 750 beds.

Why Certificate of Need for Long-Term Care?

Certificate of need is a “health planning” process designed to control health care costs. Montana’s certificate of need law has been around since the 1970’s and has undergone many changes. What hasn’t changed is that a certificate of need is required for nursing home services – skilled and intermediate nursing care. This makes sense because:

- government programs pay for the majority of nursing home care—a little over 60% is paid by Medicaid and 5-10% by Medicare
- when there are more nursing home beds than needed, the cost to consumers and payers increases because fixed costs are spread over fewer patients
- both the service itself and the price of the service are highly regulated which does not make it a good candidate for the free market
- Montana’s nursing homes are struggling financially due to low occupancy and inadequate Medicaid rates - an influx of new beds will exacerbate the problem

Senate Bill 257 is needed to maintain equity.

It is important that to the extent a “service” is subject to certificate of need, any provider of that service must be subject to certificate of need. It makes no sense to allow one facility to add nursing home beds without going through certificate of need while requiring another facility—maybe in the same community—to go through the certificate of need process.

We urge you to support SB 257.

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