

HOUSE BILL NO. 306

INTRODUCED BY R. EHLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CERTIFICATES OF NEED FOR AMBULATORY SURGICAL CARE FACILITIES; INCREASING THE POPULATION LEVEL THAT TRIGGERS A CERTIFICATE OF NEED REVIEW; REQUIRING AN IMPACT STUDY FOR A CERTIFICATE OF NEED; AMENDING SECTIONS 50-5-301, 50-5-302, AND 50-5-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Impact study required for certain facilities for ambulatory surgical

care. (1) The application process for a certificate of need for a facility for ambulatory surgical care through an outpatient center for surgical services must include an impact study if the proposed facility would be located in a county with an existing critical access hospital. The impact study must analyze the financial and operational impacts of the proposed facility for ambulatory surgical care on existing health care facilities in the service area.

(2) The applicant shall:

(a) provide the department with a list of independent consultants who could conduct the impact study required under this section; and

(b) pay the costs of the impact study.

(3) The department shall:

(a) approve a consultant to conduct an impact study from among the consultants submitted by the applicant or from a list of consultants known to the department;

(b) determine the scope of the study necessary to assess the potential positive and adverse impacts on access to health care services in the applicant's proposed service area; and

(c) provide an opportunity for public comment and participation in the study process, including the opportunity to comment on the list of consultants provided by an applicant pursuant to subsection (2)(a).

(4) The scope of the study established by the department may include but is not limited to:

(a) the impact on health care costs in the service area;

(b) the impacts on access to emergency care, inpatient care, obstetrics, mental health care, and other

1 subsidized services provided in the service area;

2 (c) the impact on local community benefit; and

3 (d) the operational and financial impacts on existing health care facilities located in the service area,
4 including but not limited to the critical access hospital in the county and the hospital's employees.

5 (5) The impact study must be completed within 180 days of the date the department establishes the
6 scope of the study.

7 (6) If the department finds, based on the results of the impact study and public comment, that the
8 proposed facility for ambulatory surgical care would adversely affect the existing local or nearest critical access
9 hospital in the county or access to health care services in the community in which the facility for ambulatory
10 surgical care would be located, the department shall:

11 (a) deny a certificate of need to the applicant; or

12 (b) impose conditions on the applicant, if licensed, to mitigate the adverse impact on the community.

13 (7) (a) For the purposes of this section, "local community benefit" means the programs or activities of
14 a critical access hospital and the proposed facility for ambulatory surgical care that:

15 (i) provide treatment or promote health; and

16 (ii) are offered in response to community needs.

17 (b) The programs or activities must:

18 (i) generate a low or negative financial return;

19 (ii) respond to the needs of special populations, including but not limited to low-income individuals;

20 (iii) supply services or programs that would not be offered if the decision to offer the services or programs
21 was based solely on financial considerations;

22 (iv) respond to public health needs; or

23 (v) involve education or research that improves overall community health.

24

25 **Section 2.** Section 50-5-301, MCA, is amended to read:

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

29 (a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that
30 exceeds \$1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys,

1 designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other
2 services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which
3 an expenditure is made must be included in determining if the expenditure exceeds \$1.5 million.

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

6 (i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded
7 down to the nearest whole number, whichever figure is smaller, and no beds have been added or relocated during
8 the 2 years prior to the date on which the letter of intent for the proposal is received;

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

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

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

15 (d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or
16 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 or
19 increase bed capacity;

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

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

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

26 (h) the provision by a hospital of services for home health care, long-term care, or inpatient chemical
27 dependency treatment; or

28 (i) the construction, development, or other establishment of a facility for ambulatory surgical care through
29 an outpatient center for surgical services in a county with a population of ~~20,000~~ 50,000 or less according to the
30 most recent federal census or estimate.

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

2 (a) "Health care facility" or "facility" means a nonfederal home health agency, a long-term care facility,
3 or an inpatient chemical dependency facility. The term does not include:

4 (i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant
5 to subsection (1)(h);

6 (ii) an office of a private physician, dentist, or other physical or mental health care professionals, including
7 licensed addiction counselors; or

8 (iii) a rehabilitation facility or an outpatient center for surgical services.

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

11 (ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for
12 persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe
13 disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 52-2-622; hotels,
14 motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or
15 individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the
16 authority of the department of corrections.

17 (3) This section may not be construed to require a health care facility to obtain a certificate of need for
18 a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than
19 a health care facility."

20

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

22 **"50-5-302. Letter of intent -- application and review process.** (1) The department may adopt rules
23 including but not limited to rules for:

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

25 (b) the scheduling of reviews;

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

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

28 (e) the circumstances under which a certificate of need may be approved for the use of hospital beds
29 to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients
30 or residents needing only that level of care.

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

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

6 (4) The department may determine that the proposals should be comparatively reviewed with similar
7 proposals that are also subject to review.

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

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

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

21 (8) If the applicant fails to submit the necessary additional information requested by the department by
22 the deadline prescribed by the department, the application is considered withdrawn.

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

26 (10) ~~The~~ Except as provided in [section 1], the review period for an application may be no longer than
27 90 calendar days after the application is initially received or, if the application is to be comparatively reviewed as
28 provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received. A
29 longer period is permitted with the consent of all affected applicants.

30 (11) During the review period a public hearing may be held if requested by an affected person or when

1 considered appropriate by the department.

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

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

7 (14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines
8 established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may
9 apply to district court for a writ of mandamus to force the department to issue the certificate of need."
10

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

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

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

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

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

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

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

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

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

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

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

30 (7) the availability of resources, including health and management personnel and funds for capital and

1 operating needs, for the provision of services proposed to be provided and the availability of alternative uses of
2 the resources for the provision of other health services;

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

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

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

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

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

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

14 (c) other appropriate factors; and

15 (12) for a facility for ambulatory surgical care provided through an outpatient center for surgical services:

16 (a) the results of the impact study conducted pursuant to [section 1];

17 (b) a written agreement that the facility for ambulatory surgical care will not:

18 (i) discriminate against patients based on their ability to pay; and

19 (ii) in cases where the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd,
20 does not apply, transfer a patient to a hospital using only a call to a 9-1-1 service; and

21 (c) proof that:

22 (i) the local or nearest critical access hospital in the county has accepted or declined a bona fide offer
23 to partner with the applicant in a joint venture that would provide the critical access hospital with an ownership
24 interest of at least 50%;

25 (ii) a majority of the physicians practicing at the facility for ambulatory surgical care have privileges to
26 practice at the partnering critical access hospital or at the nearest critical access hospital in the county if the local
27 critical access hospital declines an offer to partner with the applicant; and

28 (iii) the applicant has a charity care policy for the facility for ambulatory surgical care that at a minimum
29 matches the charity care policy of:

30 (A) the critical access hospital in the community where the facility proposes to locate; or

