

SENATE BILL NO. 192  
INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE STATUTES REQUIRING A CERTIFICATE OF NEED FOR CERTAIN HEALTH CARE FACILITIES; AMENDING SECTIONS 20-7-436, 33-31-111, 33-31-203, 33-31-221, 50-5-101, 50-5-104, 50-5-106, 50-5-207, AND 90-7-303, MCA; REPEALING SECTIONS 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, AND 50-5-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 20-7-436, MCA, is amended to read:

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

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

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

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

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

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

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

(i) provides services for children or youth with emotional disturbances;

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

(iii) is licensed by the department of public health and human services; and

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

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

~~need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.~~

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment."

**Section 2.** Section 33-31-111, MCA, is amended to read:

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

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

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

~~(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.~~

~~(5)~~(4) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

~~(6)~~(5) This section does not exempt a health maintenance organization from:

- (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;
- (b) the provisions of Title 33, chapter 22, part 19;
- (c) the requirements of 33-22-134 and 33-22-135;
- (d) network adequacy and quality assurance requirements provided under chapter 36; or
- (e) the requirements of Title 33, chapter 18, part 9.

~~(7)~~(6) Chapter 1, parts 12 and 13, of this title, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-244, 33-22-246, 33-22-247, 33-22-514, 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance

organizations."

**Section 3.** Section 33-31-203, MCA, is amended to read:

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

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

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

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

**Section 4.** Section 33-31-221, MCA, is amended to read:

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

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

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

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

the health maintenance organization;

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

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

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

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

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

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

**"50-5-101. Definitions.** As used in parts 1 ~~through 3~~ and 2 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

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

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

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

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

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

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

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

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

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

~~———— (6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.~~

~~(7)~~(4) "Chemical dependency facility" means a facility ~~whose~~ that has as its function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~(5) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~(6) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~(7) "Commission on accreditation of rehabilitation facilities" means the organization nationally

recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

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

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

~~(13)~~(8) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~(9) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~(10) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16) "Federal acts" means federal statutes for the construction of health care facilities.~~

~~(17)~~(11) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~(12) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

~~(19)~~(13) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(20)~~(14) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they

live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~(15) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~(16) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~(17) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

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

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

~~(24)~~(18) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~(19) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

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

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

~~(26)~~(20) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~(21) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~(22) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(29)~~(23) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~(24) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

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

~~(31)~~(25) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~(26) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

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



~~(34)~~(28) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~(29) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~(30) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~(31) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~(32) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~(33) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(40)~~(34) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~(35) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~(36) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~(37) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(44)~~(38) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~(39) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~(40) "Retirement home" means a building or buildings in which separate living accommodations are

rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~(41) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~ "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~(42) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

**Section 6.** Section 50-5-104, MCA, is amended to read:

**"50-5-104. Certain exemptions for spiritual healing institution.** Parts 1 through ~~3~~ and 2 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply."

**Section 7.** Section 50-5-106, MCA, is amended to read:

**"50-5-106. Records and reports required of health care facilities -- confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every a licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way ~~which~~ that would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities ~~which~~ that are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. ~~Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public.~~"

**Section 8.** Section 50-5-207, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

(h) Any provision of ~~parts~~ part 1 through 3 or 2 of this chapter is violated.

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

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

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

**Section 9.** Section 90-7-303, MCA, is amended to read:

**"90-7-303. Procedure for issuance of bonds.** (1) The authority may not finance any eligible facility unless, prior to the issuance of any bonds or notes, the members find that the facility is an eligible facility and will be operated by an institution for the purpose of providing services contemplated by this chapter.

~~(2) The authority may not allow the proceeds of any bonds or notes to be expended for any eligible facility that is a health care facility unless the facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.~~

~~(3)~~(2) The authority may not allow the proceeds of any bonds or notes to be expended for any eligible

facility unless the institution provides evidence that the eligible facility is financially feasible and that the institution reasonably expects that it will generate sufficient revenue to pay principal and interest payments when they become due."

NEW SECTION. **Section 10. Repealer.** Sections 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-307, 50-5-308, 50-5-309, and 50-5-310, MCA, are repealed.

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 12. Applicability.** [This act] applies to a person who has submitted a letter of intent or an application for a certificate of need received by the department of public health and human services pursuant to Title 50, chapter 5, part 3, before, on, or after [the effective date of this act].

- END -