

1 HOUSE BILL NO. 231

2 INTRODUCED BY M. REGIER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTIFICATES OF NEED TO INCLUDE ONLY LONG-
5 TERM CARE FACILITIES AND SERVICES; AND AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-
6 304, 50-5-307, 50-5-308, 50-5-309, AND 53-6-110, MCA."

7

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

9

10 **Section 1.** Section 50-5-101, MCA, is amended to read:

11 **"50-5-101. Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly
12 indicates otherwise, the following definitions apply:

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

14 (2) "Accreditation association for ambulatory health care" means the organization nationally
15 recognized by that name that surveys outpatient centers for surgical services upon their requests and grants
16 accreditation status to the outpatient centers for surgical services that it finds meet its standards and
17 requirements.

18 (3) "Activities of daily living" means tasks usually performed in the course of a normal day in a
19 resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

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

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

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

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

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

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

6 (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
7 personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine
8 administration.

9 (B) The term does not include the administration of prescriptive medications.

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

14 (7) "Assisted living facility" means a congregate residential setting that provides or coordinates
15 personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-
16 related services.

17 (8) "Capital expenditure" means:

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

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

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

24 (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and
25 prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems
26 and endangers the health, interpersonal relationships, or economic function of an individual or the public health,
27 welfare, or safety.

28 (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological,

1 radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from
2 the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease
3 or assessment of a medical condition.

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

7 (13) "Commission on accreditation of rehabilitation facilities" means the organization nationally
8 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
9 to a rehabilitation facility that it finds meets its standards and requirements.

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

13 (15) "Congregate" means the provision of group services designed especially for elderly or disabled
14 persons who require supportive services and housing.

15 (16) "Construction" means the physical erection of a new health care facility and any stage of the
16 physical erection, including groundbreaking, or remodeling, replacement, or renovation of:

17 (a) an existing health care facility; or

18 (b) a long-term care facility as defined in 50-5-301.

19 (17) "Council on accreditation" means the organization nationally recognized by that name that
20 surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment
21 facilities, and mental health centers upon their requests and grants accreditation status to programs and
22 facilities that it finds meet its standards and requirements.

23 (18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C.
24 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-
25 5-233.

26 (19) "Department" means the department of public health and human services provided for in 2-15-
27 2201.

28 (20) "DNV healthcare, inc." means the company nationally recognized by that name that surveys

1 hospitals upon their requests and grants accreditation status to a hospital that it finds meets its standards and
2 requirements.

3 (21) "Eating disorder center" means a facility that specializes in the treatment of eating disorders.

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

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

7 (24) "Governmental unit" means the state, a state agency, a county, municipality, or political
8 subdivision of the state, or an agency of a political subdivision.

9 (25) "Healthcare facilities accreditation program" means the program nationally recognized by that
10 name that surveys health care facilities upon their requests and grants accreditation status to a health care
11 facility that it finds meets its standards and requirements.

12 (26) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
13 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
14 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
15 individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers,
16 end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals,
17 infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical
18 assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical
19 services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

20 (b) The term does not include offices of private physicians, dentists, or other physical or mental health
21 care workers regulated under Title 37, including licensed addiction counselors.

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

26 (28) "Home infusion therapy agency" means a health care facility that provides home infusion therapy
27 services.

28 (29) "Home infusion therapy services" means the preparation, administration, or furnishing of

1 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence.
2 The services include an educational component for the patient, the patient's caregiver, or the patient's family
3 member.

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

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

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

13 (31) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
14 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
15 Except as otherwise provided by law, services provided must include medical personnel available to provide
16 emergency care onsite 24 hours a day and may include any other service allowed by state licensing authority.
17 A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days
18 a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

19 (i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and
20 tubercular patients; and

21 (ii) specialty hospitals.

22 (b) The term does not include critical access hospitals.

23 (c) The emergency care requirement for a hospital that specializes in providing health services for
24 psychiatric, developmentally disabled, or tubercular patients is satisfied if the emergency care is provided within
25 the scope of the specialized services provided by the hospital and by providing 24-hour nursing care by
26 licensed registered nurses.

27 (32) "Infirmity" means a facility located in a university, college, government institution, or industry for
28 the treatment of the sick or injured, with the following subdefinitions:

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

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

3 (33) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility
4 that provides intermediate developmental disability care for two or more persons.

5 (b) The term does not include community homes for persons with developmental disabilities that are
6 licensed under 53-20-305 or community homes for persons with severe disabilities that are licensed under 52-
7 4-203.

8 (34) "Intermediate developmental disability care" means the provision of intermediate nursing care
9 services, health-related services, and social services for persons with a developmental disability, as defined in
10 53-20-102, or for persons with related problems.

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

13 (36) "Licensed health care professional" means a licensed physician, physician assistant, advanced
14 practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the
15 department of labor and industry.

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

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

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

25 (a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that
26 provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a
27 longer period is required because transfer to a hospital is precluded because of inclement weather or
28 emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction

1 retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse
2 practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety
3 of the individual.

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

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

9 (40) "Nonprofit health care facility" means a health care facility owned or operated by one or more
10 nonprofit corporations or associations.

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

13 (42) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and
14 prevention for behavioral problems that endanger the health, interpersonal relationships, or educational
15 functions of a youth and that:

16 (i) serves either adjudicated or nonadjudicated youth;

17 (ii) charges a fee for its services; and

18 (iii) provides all or part of its services in the outdoors.

19 (b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl
20 scouts, 4-H clubs, or other similar organizations.

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

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

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

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

3 (47) "Personal care" means the provision of services and care for residents who need some assistance
4 in performing the activities of daily living.

5 (48) "Practitioner" means an individual licensed by the department of labor and industry who has
6 assessment, admission, and prescription authority.

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

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

13 (51) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

14 (52) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted
15 living facility, or a retirement home.

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

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

23 (55) "Retirement home" means a building or buildings in which separate living accommodations are
24 rented or leased to individuals who use those accommodations as their primary residence.

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

27 (57) (a) "Specialty hospital" means a subclass of hospital that is exclusively engaged in the diagnosis,
28 care, or treatment of one or more of the following categories:

- 1 (i) patients with a cardiac condition;
 2 (ii) patients with an orthopedic condition;
 3 (iii) patients undergoing a surgical procedure; or
 4 (iv) patients treated for cancer-related diseases and receiving oncology services.

5 (b) For purposes of this subsection (57), a specialty hospital may provide other services for medical
 6 diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals as otherwise provided by
 7 law if the care encompasses 35% or less of the hospital services.

8 (c) The term "specialty hospital" does not include:

- 9 (i) psychiatric hospitals;
 10 (ii) rehabilitation hospitals;
 11 (iii) children's hospitals;
 12 (iv) long-term care hospitals; or
 13 (v) critical access hospitals.

14 (58) "State ~~health-long-term~~ care facilities plan" means the plan prepared by the department to project
 15 the need for ~~health-long-term~~ care facilities within Montana and approved by the governor and a statewide
 16 health coordinating council appointed by the director of the department.

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

19 (60) "The joint commission" means the organization nationally recognized by that name that surveys
 20 health care facilities upon their requests and grants accreditation status to a health care facility that it finds
 21 meets its standards and requirements."

22

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

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

27 (a) ~~the incurring of an obligation by or on behalf of a health long-term care facility for any capital~~
 28 ~~expenditure that exceeds \$1.5 million, other than to acquire an existing health long-term care facility. The costs~~

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

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

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

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

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

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

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

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

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

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

25 ~~(f)~~—the expansion of the geographical service area of a home health agency;

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

1 ~~(h) (g) (F)~~ the provision by a hospital of services for ~~home health care, long-term care, or inpatient~~
 2 ~~chemical dependency treatment; or~~

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

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

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

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

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

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

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

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

23 (3) This section may not be construed to require a ~~health-long-term~~ care facility to obtain a certificate
 24 of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person
 25 other than a ~~health-long-term~~ care facility.

26 (4) (A) WHEN A PERSON INCURS AN OBLIGATION BY OR ON BEHALF OF A LONG-TERM CARE FACILITY FOR A
 27 CAPITAL EXPENDITURE THAT EXCEEDS \$5 MILLION AND DOES NOT OTHERWISE REQUIRE A CERTIFICATE OF NEED UNDER
 28 THIS PART, THE PERSON SHALL, UPON COMPLETION OF THE PROJECT:

- 1 (I) NOTIFY THE DEPARTMENT OF THE TOTAL AMOUNT OF THE EXPENDITURE; AND
 2 (II) PROVIDE A DESCRIPTION OF THE PROJECT.
 3 (B) THIS SUBSECTION (4) DOES NOT APPLY TO A CAPITAL EXPENDITURE THAT INVOLVES THE ACQUISITION OF
 4 AN EXISTING LONG-TERM CARE FACILITY."

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

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

- 9 (a) the form and content of letters of intent and applications;
 10 (b) the scheduling of reviews;
 11 (c) the format of public informational hearings and reconsideration hearings;
 12 (d) the circumstances under which applications may be comparatively reviewed; and
 13 (e) the circumstances under which a certificate of need may be approved for the use of hospital beds
 14 to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to
 15 patients or residents needing only that level of care.

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

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

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

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

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

1 sent.

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

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

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

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

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

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

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

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

1

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

3 "**50-5-304. Review criteria, required findings, and standards.** The department shall by rule
4 promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this
5 chapter, including but not limited to the following considerations and required findings:

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

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

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

12 (c) is consistent with the current state ~~health-long-term~~ care facilities plan;

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

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

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

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

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

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

25 (8) the relationship, including the organizational relationship, of the ~~health-long-term care~~ services
26 proposed to be provided to ancillary or support services;

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

1 reviewed on the costs of providing ~~health~~long-term care services by the person proposing the construction
 2 project;

3 (10) the distance, convenience, cost of transportation, and accessibility of ~~health~~services offered by
 4 long-term care facilities for persons who live outside urban areas in relation to the proposal; and

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

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

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

9 (c) other appropriate factors."

10

11 **Section 5.** Section 50-5-307, MCA, is amended to read:

12 **"50-5-307. Civil penalty -- injunction.** (1) A person who violates the terms of 50-5-301 is subject to a
 13 civil penalty of not less than \$1,000 or more than \$10,000. Each day of violation constitutes a separate offense.

14 The department or, upon request of the department, the county attorney of the county where the health care
 15 facility in question is located may petition the district court to impose, assess, and recover the civil penalty.

16 Money collected as a civil penalty shall be deposited in the state general fund.

17 (2) The department or, upon request of the department, the county attorney of the county where the
 18 ~~health~~long-term care facility in question is located may bring an action to enjoin a violation of 50-5-301, in
 19 addition to or exclusive of the remedy in subsection (1)."

20

21 **Section 6.** Section 50-5-308, MCA, is amended to read:

22 **"50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed
 23 capital expenditure if:

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

27 (2) the department has determined that the long-term care facility or service for which the capital
 28 expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state

1 ~~health-long-term~~ care facilities plan."

2

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

4 **"50-5-309. Exemptions from certificate of need review.** The following are exempt from a certificate
5 of need review:

6 (1) construction of a state-owned long-term care facility; and

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

10

11 **Section 8.** Section 53-6-110, MCA, is amended to read:

12 **"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information
13 required in 17-7-111, the department of public health and human services shall submit a report concerning
14 medicaid funding for the next biennium. This report must include at least the following elements:

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

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

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

20 (ii) trends in use of services;

21 (iii) trends in medicaid recipient levels; and

22 (iv) the effects of new and projected long-term care facilities and services for which a need has been
23 identified in the state ~~health-long-term~~ care facilities plan.

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

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

1 (4) Beginning November 15 of each year through June 15 of the following year, the department of
2 public health and human services shall provide to the legislative fiscal analyst monthly reports containing
3 estimates of the cost for medicaid services and a budget status report for all department programs. The
4 department shall also provide a fiscal yearend summary of medicaid costs and the department budget status
5 report prior to the first legislative finance committee meeting following the end of the fiscal year. The reports
6 must be presented in a format mutually agreed to by the legislative fiscal analyst and the department."

7

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