

## **SJR 15 Specialty Hospital Suggested Statutory Changes -- for Feb. 11, 2008, discussions**

The ideas below include some options to be considered for establishing a specialty hospital. This is not a requested bill draft, but is being posed for discussion. Also, see the comments below from the staff attorney about various requirements:

**50-5-245. Department to license specialty hospitals -- standards -- rulemaking -- moratorium.** (1) Subject to subsection (4), the department shall license specialty hospitals using the requirements for licensure of hospitals ~~and~~ the procedure provided for in parts 1 and 2 of this chapter, and the following criteria:

(a) prior to licensing a specialty hospital the applicants shall provide in writing to the department a signed statement from the nonprofit community hospital in which the specialty hospital is to be established acknowledging:

(i) that the nonprofit community hospital had a right of first refusal to participate in the establishment and ownership of the specialty facility, specifying the following conditions:

(A) the maximum amount of participation offered for all partners;

(B) the management of the specialty hospital if joint ownership occurs;

(C) the time period over which the hospital and the founder of the specialty hospital were required to mutually respond to offers and counter-offers; and

(D) other criteria that the department may set by rule.

(b) requirements that any joint venture between a nonprofit community hospital and a specialty hospital contain a policy that the specialty hospital must have the same charity care guidelines as the nonprofit community hospital and the same mix of payers for patients;

(c) the applicant must provide a policy that states that the hospital will not employ a person to exercise or provide an area of practice licensed under Title 37 if that person is not licensed appropriately.

(2) A specialty hospital may not circumvent rules by listing relatives or dummy corporate entities to avoid meeting the requirements of this part.

(RENUMBER THE FOLLOWING)

(2) The department shall adopt rules that are necessary to implement and administer this section.

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, 2009.

(4) A health care facility licensed by the department and in existence on May 8, 2007, may not change its licensure status in order to qualify for licensure as a specialty hospital unless the health care facility is licensed as a hospital.

Comments from Staff Attorney Lisa Mecklenberg Jackson on various criteria:

### **1. Can we write legislation that would require joint ventures such as that in Kalispell?**

SHORT ANSWER: No, this would be considered a restraint of trade under the Federal Commerce Clause. However, some kind of "encouragement" could be offered for those organizations choosing to enter into a joint venture. These might include:

-tax incentives (income tax credit, exemption from property tax)

Montana law recognizes joint ventures, but does not regulate them.

### **2. Can we write legislation mandating the composition of hospital boards (certain % of doctors)?**

SHORT ANSWER: Possibly. Non-profits are privately owned. Could go into non-profit board section of the MCA (Title 35, Ch. 2, part 4) and carve out an exception for hospitals, then go into hospital statutes in Title 50 and define the composition of the board (50-5-101--Definitions or 50-16--Health Care information). The problem then would be—why are you regulating one non-profit board and not all the others?