

HOUSE BILL NO. 576

INTRODUCED BY A. WITTICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE LICENSING;
5 ~~INSPECTION, AND CERTIFICATION OF STATE-OPERATED~~ HEALTH CARE FACILITIES; REQUIRING THE
6 DEPARTMENT OF JUSTICE TO LICENSE, ~~INSPECT, AND CERTIFY STATE-OPERATED~~ HEALTH CARE
7 FACILITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS ~~7-34-2301, 15-6-201,~~
8 ~~15-30-2366, 15-60-101, 15-60-201, 15-66-201, 15-67-201, 20-7-436, 20-9-311, 33-22-702, 33-22-705, 33-36-305,~~
9 ~~45-5-624, 45-9-208, 50-5-101, 50-5-115, 50-5-1103, 50-5-1202, 50-8-101, 52-1-103, 52-2-603, 52-2-621,~~
10 ~~52-2-622, 52-4-202, 52-4-204, 52-4-205, 52-8-101, 53-6-106, 53-6-107, 53-6-109, 53-6-401, 53-19-102,~~
11 ~~53-20-104, 53-20-302, 53-20-305, 53-21-1001, 53-24-201, 53-24-204, 53-24-207, 53-24-208, 76-2-411, AND~~
12 ~~76-2-412, 50-5-103 AND 50-5-113,~~ MCA; PROVIDING AN APPROPRIATION FOR TRANSITION EMPLOYEES;
13 AND PROVIDING EFFECTIVE DATES."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

19 **NEW SECTION. Section 1. Department of justice to license health care facilities operated by state**
20 **-- rulemaking authority.** (1) The department of justice shall license a health care facility, as defined in 50-5-101,
21 if the health care facility is operated by the state.

22 (2) (a) The department of justice shall adopt rules and minimum standards for implementation of Title 50,
23 chapter 5, parts 1 and 2, as those parts apply to the licensing of state-operated health care facilities.

24 (b) The rules and standards adopted by the department of justice must be reasonably similar to those
25 adopted by the department of public health and human services pursuant to 50-5-103 and 50-5-238.

26 (3) (a) The department of justice enjoys all of the rights and privileges and is subject to all of the duties
27 and responsibilities granted to the department of public health and human services in Title 50, chapter 5, parts
28 1 and 2, as far as those rights, privileges, duties, and responsibilities relate to the licensing of state-operated
29 health care facilities.

30 (b) A health care facility operated by the state and subject to licensing by the department of justice under



1 this section is subject to the same duties, responsibilities, prohibitions, fees, and penalties as a health care facility
2 licensed by the department of public health and human services in Title 50, chapter 5, parts 1 and 2.

3 (4) (a) The department of justice may bring an action for an injunction or other process against a person
4 for the reasons listed in 50-5-108.

5 (b) (i) The department of justice or, on request of the department, the county attorney of the county in
6 which the state-operated facility in question is located may petition a district court to impose a civil penalty as
7 provided in 50-5-112.

8 (ii) The power to pursue other remedies, as provided to the department of public health and human
9 services in 50-5-112(4), is granted to the department of justice to administer and enforce the provisions of this
10 section.

11 (c) The department of justice may undertake an administrative action as provided in 50-5-114 and may
12 file a complaint for receivership as provided in 50-5-115.

13

14 **Section 2.** Section 50-5-103, MCA, is amended to read:

15 **"50-5-103. Rules and standards -- accreditation.** (1) The department shall adopt rules and minimum
16 standards for implementation of parts 1 and 2, except that the department may not license a health care facility
17 operated by the state.

18 (2) Any facility covered by this chapter or [section 1] shall comply with the state and federal requirements
19 relating to construction, equipment, and fire and life safety.

20 (3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon
21 adoption.

22 (4) (a) Any hospital located in this state that furnishes written evidence required by the department,
23 including the recommendation for future compliance statements, to the department of its accreditation granted
24 by an entity listed in subsection (4)(b) is eligible for licensure in the state for the accreditation period and may not
25 be subjected to an inspection by the department for purposes of the licensing process.

26 (b) A hospital may provide evidence of its accreditation by:

27 (i) DNV healthcare, inc.;

28 (ii) the healthcare facilities accreditation program; or

29 (iii) the joint commission.

30 (c) The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health

1 care facility to answer specific complaints made in writing by any person against the facility when the complaints
2 pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing
3 pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which
4 the complaint pertains.

5 (5) The department may consider as eligible for licensure during the accreditation period any health care
6 facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation
7 for future compliance statements, of its accreditation by the joint commission. The department may inspect a
8 health care facility considered eligible for licensure under this section to ensure compliance with state licensure
9 standards.

10 (6) The department may consider as eligible for licensure during the accreditation period any
11 rehabilitation facility that furnishes written evidence, including the recommendation for future compliance
12 statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The
13 department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure
14 compliance with state licensure standards.

15 (7) The department may consider as eligible for licensure during the accreditation period any outpatient
16 center for surgical services that furnishes written evidence, including the recommendation for future compliance
17 statements, of accreditation of its programs by the accreditation association for ambulatory health care. The
18 department may inspect an outpatient center for surgical services considered eligible for licensure under this
19 section to ensure compliance with state licensure standards.

20 (8) The department may consider as eligible for licensure during the accreditation period any behavioral
21 treatment program, chemical dependency treatment program, residential treatment facility, or mental health
22 center that furnishes written evidence, including the recommendation for future compliance statements, of
23 accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment
24 program, chemical dependency treatment program, residential treatment facility, or mental health center
25 considered eligible for licensure under this section to ensure compliance with state licensure standards."
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27 **Section 3.** Section 50-5-113, MCA, is amended to read:

28 **"50-5-113. Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the person
29 knowingly conceals material information about the operation of the facility or does any of the following and by
30 doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

- 1 (a) commits an act prohibited by 50-5-111;
- 2 (b) omits material information or makes a false statement or representation in an application, record,
3 report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this
4 chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2 or [section 1]; or
- 5 (c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required
6 to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule,
7 license provision, or order adopted or issued pursuant to part 1 or 2 or [section 1].
- 8 (2) A person convicted under subsection (1) is subject to a fine of not more than \$1,000 for the first
9 offense and not more than \$2,000 for each subsequent offense for each day that a facility is in violation of a
10 provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part
11 1 or 2 or [section 1].
- 12 (3) In determining the amount of penalty to be assessed for an alleged violation under this section, the
13 court shall consider:
- 14 (a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;
15 (b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;
16 (c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this
17 chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2 or [section 1]; and
18 (d) other matters as justice may require.
- 19 (4) Prosecution under this section does not bar enforcement under any other section of this chapter or
20 pursuit of any other appropriate remedy by the department or, if the facility is operated by the state, by the
21 department of justice.
- 22 (5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the
23 first judicial district.
- 24 (6) A penalty collected under this section must be deposited in the state general fund."
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26 **NEW SECTION. Section 4. Transition -- report to legislature.** The department of justice shall create
27 a transition plan to implement the provisions of [this act] by July 1, 2016. The department of public health and
28 human services shall participate in the planning process to the extent required. The department of justice shall
29 report to the children, families, health, and human services interim committee provided for in 5-5-225 at times
30 requested by the committee.

