



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill #	HB0576
---------------	--------

Title:	Generally revise investigation, licensing, cert. of health care facilities
---------------	--

Primary Sponsor:	Wittich, Art
-------------------------	--------------

Status:	As Introduced
----------------	---------------

- | | | |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	\$980,955	\$428,558	\$425,447	\$431,829
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u><u>(\$980,955)</u></u>	<u><u>(\$428,558)</u></u>	<u><u>(\$425,447)</u></u>	<u><u>(\$431,829)</u></u>

Description of fiscal impact: HB 576 transfers the survey, certification, and licensing functions related to health care facilities and residential treatment facilities from the Department of Public Health and Human Services (DPHHS) to the Department of Justice (DOJ). HB 576 will significantly impact the DOJ, requiring 3.00 new FTE to support two new bureaus, managing software, projects and other administrative functions. In FY 2016, \$75,000 is appropriated in HB 576 for the purpose of transition support. The remainders of the provisions of HB 576 are effective 7/1/2016.

FISCAL ANALYSIS

Assumptions:

Department of Public Health and Human Services

- 1) HB 576 transfers the administration and management, budgetary authority and oversight, and federal reporting associated with the Survey and Certification Bureau and the residential treatment facility, chemical dependency center, community homes for persons with developmental disabilities, community

homes for severely disabled persons, adult foster care facility, youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, transitional living programs, and child placing agencies licensing components of the DPHHS to the DOJ.

- 2) This transfer consists of 56.00 FTE and their related personnel services costs and operating expenses, including rent, travel, network connectivity, phones, supplies, etc., and management of the Certified Nurse Aid Registry and the Healthcare Facility Licensing System.
- 3) There are field staff located in remote office locations around the state as well as staff at the main office located in Helena. It is assumed that DOJ does not have sufficient office space within their existing facilities to house the transfer of the associated staff. Therefore it is assumed that these staff will remain at their current location and no moving costs will be incurred as a result of this transfer. If moving expenses are needed, this costs of this fiscal note would increase.
- 4) Each licensing function has a different funding methodology. For example, child care facilities are funded with a split of 60% general fund and 40% federal funds; chemical dependency facilities are funded with 100% state special revenues; certification of facilities are funded with a combined split of approximately 63.75% Medicare (100% federal funds) and 36.25% Medicaid (75% federal funds and 25% general funds). These resulting funding split of all licensing and certification functions is approximately 22.43% general funds, 2.82% state special revenue funds and 74.75% federal funds.
- 5) Based upon current workloads for information technology, accounting, budgeting, and human resource staff, this transfer is not anticipated to affect workload at a significant enough level to eliminate any FTE.
- 6) The DPHHS has several areas of administrative rules where certain services have multi-division applications that are affected by the requirements of HB 576. It is assumed that the DOJ would submit administrative rule changes to adopt the requirements of HB 576 and amend out those portions where multi-division applications are included. The DPHHS would then adopt new rules for those areas affected by this change. It is estimated that approximately 50 pages of rules would be affected. The Secretary of State's office charges \$50 per page for publication and printing of administrative rules. The cost of separating these out would be absorbed within existing DPHHS resources.

Department of Justice

- 7) The DOJ will use the \$75,000 appropriated in HB 576 to hire temporary staff through a staffing agency to make the necessary preparations to move portions of the DPHHS to the DOJ.
- 8) The existing data management software used at DPHHS, IronData, would be replaced by a more progressive and intuitive system at the recommendation of the Justice Information Technology Services Division (JITSD). The estimated cost is one time in nature at \$675,000 in FY 2016.
- 9) Annual maintenance costs for the new system (software assurance, licenses, databases, servers, support, etc.) are estimated to be \$115,000 per year.
- 10) The JITSD will need 2.50 additional FTE to accommodate the system requirements and support functions associated with the sections of the Quality Assurance Division being transferred to the DOJ. 2.50 FTE will start in FY 2016, and 0.50 FTE will start in FY 2017.
- 11) The Central Services Division will need an additional 0.50 FTE accountant to comply with reporting requirements associated with the Quality Assurance Division. This position will start in FY 2017.
- 12) One-time startup costs for the 2.00 FTE total \$14,845 in FY 2016 and \$9,396 for 1.00 FTE in FY 2017.
- 13) Additional expenditures due to the computer replacement cycle for the new staff are estimated to be \$14,280 in FY 2016 and FY 2017.
- 14) Other operational and fixed cost related expenditures are estimated to be \$11,889 in FY 2016 and \$18,796 in FY 2017.
- 15) All expenditures are inflated at 1.5% per year in FY 2018 and FY 2019.
- 16) This fiscal note assumes that all federal and state special expenditures currently supporting these activities at DPHHS will be spent at the same level to support the activities at the DOJ, including all expenditures made

from state special and federal indirect cost funds. The DOJ will be required to spend at an indirect cost rate approved by its federal cognizant agency.

Department of Public Health and Human Services

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	0.00	(56.00)	(56.00)	(56.00)
<u>Expenditures:</u>				
Personal Services	\$0	(\$3,776,385)	(\$3,828,707)	(\$3,883,783)
Operating Expenses	\$0	(\$691,652)	(\$702,026)	(\$712,556)
Equipment	\$0	(\$13,654)	(\$13,859)	(\$14,067)
TOTAL Expenditures	<u>\$0</u>	<u>(\$4,481,691)</u>	<u>(\$4,544,592)</u>	<u>(\$4,610,406)</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	(\$1,004,518)	(\$1,016,991)	(\$1,030,833)
State Special Revenue (02)	\$0	(\$126,474)	(\$128,372)	(\$130,297)
Federal Special Revenue (03)	\$0	(\$3,350,698)	(\$3,399,229)	(\$3,449,276)
TOTAL Funding of Exp.	<u>\$0</u>	<u>(\$4,481,691)</u>	<u>(\$4,544,592)</u>	<u>(\$4,610,406)</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	(\$3,350,698)	(\$3,399,229)	(\$3,449,276)
Other	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>(\$3,350,698)</u>	<u>(\$3,399,229)</u>	<u>(\$3,449,276)</u>

Department of Justice

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	2.00	3.00	3.00	3.00
<u>Expenditures:</u>				
Personal Services	\$149,941	\$4,047,470	\$4,103,857	\$4,163,061
Operating Expenses	\$831,014	\$849,124	\$852,323	\$865,107
Equipment	\$0	\$13,654	\$13,859	\$14,067
TOTAL Expenditures	\$980,955	\$4,910,248	\$4,970,039	\$5,042,235
<u>Funding of Expenditures:</u>				
General Fund (01)	\$980,955	\$1,433,076	\$1,442,438	\$1,462,662
State Special Revenue (02)	\$0	\$126,474	\$128,372	\$130,297
Federal Special Revenue (03)	\$0	\$3,350,698	\$3,399,229	\$3,449,276
TOTAL Funding of Exp.	\$980,955	\$4,910,248	\$4,970,039	\$5,042,235
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$3,350,698	\$3,399,229	\$3,449,276
TOTAL Revenues	\$0	\$3,350,698	\$3,399,229	\$3,449,276
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$980,955)	(\$428,558)	(\$425,447)	(\$431,829)
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

Technical Notes:

1. a) HB 576 transfers statutory duties related to licensing, inspection, and certification of Montana’s health care facilities from DPHHS, an agency with a director who reports to the Governor, to DOJ, which is administered by a different elected official, the State Attorney General.

b) In Montana, the executive powers of government are vested in the Governor. He or she exercises the executive power to see that the laws are faithfully executed. “The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.” Article VI, § 4 (1), Mont. Const. The Attorney General is the chief legal officer of the State, not the chief executive officer. “The attorney general is the legal officer of the state and shall have the duties and powers provided by law.” Article VI, §4 (4).

c) Licensing, inspection and certification are exercises of police powers to protect the public’s safety and well-being. That is an executive function of government. It is the Governor, acting through the agencies created under Article V § 7, who has the power to determine what health care facilities in Montana are licensed or certified.

- 2. HB 576, as drafted, conflicts with §§ 42 U.S.C. 1395aa, 42 USC 1396a (a) (5) and 42 U.S.C. 1396r and the implement regulations at 42 CFR 431 et seq., and 42 CFR 488 et seq. seq.
 - a. The plain language of 42 USC 1396a (a) (5) requires a state to designate a single state agency to administer the Medicaid plan:
 - i. (a) A State plan for medical assistance must. . . (5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan;
 - b. The implement regulations at 42 CFR 431.10, et seq., reiterate the single state agency requirement.
 - c. A number of federal decisions uphold the single state agency requirement in various fact situations. This includes at least two Ninth Circuit cases. *San Lazaro Ass'n v. Connell*, 286 F.3d 1088, 2002 U.S. App. LEXIS 6998 (9th Cir. Cal. 2002) (describes the single state agency requirement as "a structural programmatic requirement that facilitates federal oversight of state Medicaid programs") and *Sobky v. Smoley*, 855 F. Supp. 1123, 1145-46 (E.D. Cal. 1994.) The single state agency requirement "prevents improvident ends by arresting their beginnings. Put simply, by directing states to designate a single Medicaid agency the decisions of which may not be overridden by other state and local actors," *K.C. v. Shipman*, 716 F.3d 107, 114-115 (4th Cir. N.C. 2013)
 - d. Section 42 U.S.C. 1395aa and the implementing regulations at 42 CFR 488 et seq., allow for other state agencies to carry out survey functions if the state plan requires the Medicaid state agency to adhere to those findings in its provider agreements and payments but, under Montana law, the survey agency must be an executive agency subject to the authority of the Governor.
- 2. HB 576 does not reference 50-5-2, MCA, which is the law that authorizes the licensing functions of hospitals and related facilities.
- 3. HB 576 does not reference the Montana Long Term Care Resident’s Bill of Rights which is found at 50-5-11, MCA. This relates to licensing and certification standards and processes.
- 4. HB 576 does not reference 52-2-111, MCA, which states the department must administer or supervise all child welfare services of the state, as defined in 52-2-101, MCA. This bill transfers some of the duties for the protection and care of abused or neglected children related to approval of kinship homes and licensure of foster homes in contradiction to this part of the statute.
- 5. In Section 28 of HB 576, 53-6-106, MCA, changes the definition of “Department” to mean the department of Justice. This definition affects 53-6-106 through 53-6-108, MCA. Under 53-6-107 (2), MCA, the department may impose civil monetary penalties. These penalties are to be used for the specific purpose outlined within 53-6-107 (3) and (4), MCA. These funds are currently deposited in a designated fund in the states accounting system for the purposes outlined in this section. It is unclear how the coordination of these funds will be managed between DOJ and DPHHS in such cases where these collected funds are utilized for this purpose.
- 6. The department operates the certification and survey function for Medicaid and Medicare facilities in the State of Montana under an agreement with the Centers of Medicare and Medicaid Services (CMS) that was signed in 1994 between the then Department of Health and Environmental Sciences and CMS. A new agreement would need to be entered into between DOJ and CMS to authorize the continuation of the certification and survey functions for Medicaid and Medicare facilities in the State of Montana.

Sponsor’s Initials

Date

Budget Director’s Initials

Date