



Department of Public Health and Human Services

SENATE

PUBLIC HEALTH, WELFARE & SAFETY

Exhibit No. 4

Date 4/10/2015

Steve Bullock, Governor

Bill No. HB 576

Richard H. Opper, Director

Summary of Testimony of Geralyn Driscoll
Office of Legal Affairs, (406) 444-5331, gdriscoll@mt.gov
Senate Public Health, Welfare and Safety Committee
April 10, 2015 - HB 576

The Department opposes HB 576. It is an unconstitutional transfer of executive power from the Governor to the Attorney General. It is also an inefficient duplication of government functions to transfer the licensing of 7 state operated facilities from DPHHS, an agency that licenses approximately 300 health care facilities annually, to DOJ, an agency with no expertise in licensing health care facilities.

HB 576 violates Article VI of the Montana Constitution. *(The applicable sections of Article VI are attached.)*

Protecting public health and safety is an executive duty that Montana's Constitution requires the Governor, not the Attorney General, to perform. The Governor is the elected official with the power and the responsibility to regulate the state's health care facilities. The Legislature cannot by statute re-assign the Governor's constitutional powers and duties to the Attorney General.

The licensing process for the state health care facilities is government regulation to protect the most vulnerable of Montana's citizens – the mentally ill, the elderly, the disabled. That duty, and the accountability for its performance, belongs to the Governor, acting through the agencies created under Article VI § 7, not the Attorney General.

It is an inefficient duplication of government functions to transfer the licensing of 7 state operated facilities from DPHHS to DOJ.

The Attorney General's function as the state's legal officer carries with it important duties that require legal expertise but the Department of Justice (DOJ) is not a regulatory agency with expertise in health care. The regulatory agency with expertise in health care is DPHHS.

DPHHS efficiently and effectively licenses approximately 300 hundred Montana facilities. This work is done by skilled professionals – nurses, chiropractors, social workers, dietician nursing home administrators, engineers and clinical laboratory scientists, for example – who understand health care. They exercise independent professional judgment regarding compliance with state rules.

Transferring the licensing of the 7 state operated health care facilities would create a duplicate licensing function for 7 facilities. This is illustrated by the language of New Section 1 (2) (a) and (b):

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

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

The difficulty with duplicating the same licensing function in two agencies is increased by the fact that the 7 state operated health care facilities are licensed pursuant to 5 different sets of regulations-- Nursing Homes, Hospitals, In-patient Chemical Dependency and an ICF/IID &/ICF/DD. The new DOJ unit would have to become proficient with 5 types of licensing criteria to effectively inspect and license the 7 state operated facilities.

Constitution of Montana -- Article VI -- THE EXECUTIVE

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

...

Section 4. Duties. (1) 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.

...

(4) The attorney general *is the legal officer of the state* and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law

...

Section 15. Information for governor. (1) The *governor* may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.