

HOUSE BILL NO. 610  
INTRODUCED BY WHALEN

IN THE HOUSE

FEBRUARY 12, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 24, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 80; NOES, 19.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 25, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 29, 1993	THIRD READING, CONCURRED IN. AYES, 36; NOES, 11.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 610  
2 INTRODUCED BY Whalen  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
5 ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND  
6 ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES;  
7 AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
8 SCIENCES TO IMPOSE AND COLLECT CIVIL AND ADMINISTRATIVE  
9 PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING  
10 THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR  
11 RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS;  
12 CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A  
13 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,  
14 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND  
15 REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230,  
16 AND 50-5-231, MCA."  
17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
19 NEW SECTION. Section 1. Prohibited activities. It is  
20 unlawful to:  
21 (1) operate a facility without a license;  
22 (2) prevent, interfere with, or impede department  
23 investigation, department enforcement, department  
24 examination of relevant books and records, or activities of  
25 the department concerning the preservation of evidence; or

1 (3) violate any provision of part 1 or 2 of this  
2 chapter or violate a rule, license provision, or order  
3 adopted or issued pursuant to part 1 or 2.

4 NEW SECTION. Section 2. Civil penalties. (1) A person  
5 who commits an act prohibited by [section 1] is subject to a  
6 civil penalty not to exceed \$1,000 for each violation. Each  
7 day of each violation constitutes a separate offense. The  
8 department or, upon request of the department, the county  
9 attorney of the county in which the health care facility in  
10 question is located may petition the court to impose the  
11 civil penalty. Venue for an action to collect a civil  
12 penalty pursuant to this section is in the county in which  
13 the facility is located or in the first judicial district.

14 (2) A penalty collected under this section must be  
15 deposited in the patient protection account provided for in  
16 [section 7].

17 (3) In addition to or exclusive of the remedy provided  
18 in subsection (1), the department may pursue remedies  
19 available for a violation as provided for in 50-5-108 or any  
20 other remedies available to it.

21 NEW SECTION. Section 3. Criminal penalties. (1) A  
22 person is guilty of an offense under this section if the  
23 person knowingly:

24 (a) commits an act prohibited by [section 1];  
25 (b) omits material information or makes a false

statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense. Each day of each violation constitutes a separate violation.

(3) Action under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(4) Venue for an action to collect a penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(5) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7].

NEW SECTION. **Section 4. Administrative enforcement --**  
notice -- order for corrective action -- administrative penalty. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order, or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Until issuance of a contrary decision by the board, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control

1 of the violation involved or the taking of other corrective  
2 action or an order for the assessment of an administrative  
3 penalty, or both. As appropriate, an order issued as part of  
4 a notice or after a hearing may prescribe the date by which  
5 the violation must cease; time limits for particular action  
6 in preventing, abating, or controlling the violation; or the  
7 date by which the administrative penalty must be paid. If,  
8 after a hearing on an order contained in a notice, the board  
9 finds that a violation has not occurred or is not occurring,  
10 it shall declare the department order void.

11 (3) An order issued pursuant to this section may impose  
12 an administrative penalty of not more than \$1,000 for each  
13 violation. Each day of each violation constitutes a separate  
14 offense.

15 (4) In determining the amount of penalty to be assessed  
16 for an alleged violation under this section, the department  
17 or the board, as appropriate, shall consider:

18 (a) the gravity of the violation in terms of the degree  
19 of physical or mental harm to a resident or patient; the  
20 degree of harm to the health, safety, rights, security, or  
21 welfare of a resident or patient; and the degree of  
22 deviation committed by the facility from a requirement  
23 imposed by part 1 or 2 of this chapter or by a rule, license  
24 provision, or order adopted or issued pursuant to part 1 or  
25 2;

1 (b) whether the amount of the penalty serves as a  
2 deterrent relative to the alleged violator's ability to pay;

3 (c) the economic benefit or savings, if any, to the  
4 alleged violator as a result of noncompliance; and

5 (d) other matters as justice may require.

6 (5) The contested case provisions of the Montana  
7 Administrative Procedure Act, Title 2, chapter 4, part 6,  
8 apply to a hearing conducted pursuant to this section.

9 (6) Instead of or in addition to issuing the order  
10 provided for in subsection (1), the department may:

11 (a) require that the alleged violators appear before  
12 the board for a hearing at a time and place specified in the  
13 notice and answer the charges; or

14 (b) initiate action under any other applicable  
15 provisions of part 1 or 2 of this chapter.

16 (7) This chapter does not prevent the department from  
17 making efforts to obtain voluntary compliance through  
18 warning, conference, or any other appropriate means.

19 (8) In connection with a hearing held pursuant to this  
20 section, the board may and on application by a party shall  
21 compel the attendance of witnesses and the production of  
22 evidence on behalf of any party.

23 (9) An administrative penalty collected pursuant to  
24 this section must be deposited in the patient protection  
25 account provided for in [section 7].

**NEW SECTION. Section 5. Receiverships.** (1) Upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner;

(d) a life threatening situation exists for the residents of the facility; or

(e) a facility has repeatedly violated the provisions of Title 50, chapter 5, part 1 or 2, or both, or the rules implementing those provisions.

(2) If a condition specified in subsection (1)(c) or (1)(d) exists, a resident or a resident's legal guardian or family member may initiate receivership proceedings after first giving reasonable notice of the proceedings to the department and giving the department an opportunity to respond to the conditions.

(3) In the event of an emergency, within the discretion of the department, a receiver may be appointed upon an ex parte application by the department. If a receiver is

appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(4) The department shall maintain a list of persons qualified to act as receivers.

(5) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(6) Whenever possible, receivers must be paid from the income of the facility; however, receivers may be paid from the patient protection account provided for in [section 7]. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(7) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

**NEW SECTION. Section 6.** Facility inspections. (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

**NEW SECTION. Section 7.** Patient protection account.

(1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection

account:

(a) penalties collected pursuant to part 1 or 2 of this chapter;

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account; and

(c) interest earned on money in the account.

(3) The funds deposited in the patient protection account may be used only:

(a) to administer parts 1 and 2 of this chapter, including department expenses associated with administration;

(b) to pay for the cost of department-initiated relocation of residents;

(c) to pay for receivers as provided under [section 5(6)].

**Section 8.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be  
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory  
5 appropriation must specifically state that a statutory  
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing  
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
10 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
11 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
12 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
13 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
15 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
16 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
17 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
18 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
19 39-71-2504; 44-12-206; 44-13-102; [section 7]; 53-6-150;  
20 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
21 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
22 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
23 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

24 (4) There is a statutory appropriation to pay the  
25 principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,  
2 that have been authorized and issued pursuant to the laws of  
3 Montana. Agencies that have entered into agreements  
4 authorized by the laws of Montana to pay the state  
5 treasurer, for deposit in accordance with 17-2-101 through  
6 17-2-107, as determined by the state treasurer, an amount  
7 sufficient to pay the principal and interest as due on the  
8 bonds or notes have statutory appropriation authority for  
9 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
10 567, L. 1991, the inclusion of 19-6-709 terminates upon  
11 death of last recipient eligible for supplemental benefit;  
12 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
13 22-3-811 terminates June 30, 1993.)"

14 **Section 9.** Section 50-5-103, MCA, is amended to read:

15 "50-5-103. Rules and standards -- accreditation by  
16 joint commission. (1) The department shall promulgate and  
17 adopt rules and minimum standards for implementation of  
18 parts 1 through-4 and 2.

19 (2) Any facility covered by this chapter shall comply  
20 with the state and federal requirements relating to  
21 construction, equipment, and fire and life safety.

22 (3) The department shall extend a reasonable time for  
23 compliance with rules for parts 1 through-4-after and 2 upon  
24 adoption.

25 (4) Any hospital that furnishes written evidence,

1 including the recommendation for future compliance  
 2 statements to the department of its accreditation granted by  
 3 the joint commission on accreditation of hospitals health  
 4 care organizations, is eligible for licensure in the state  
 5 for the accreditation period and may not be subjected to an  
 6 inspection by the department ~~except that the~~ for purposes  
 7 of the licensing process. The department may, in addition to  
 8 its inspection authority in [section 6], inspect any  
 9 licensed health care facility to answer specific complaints  
 10 made in writing by any person against the facility when such  
 11 the complaints pertain to licensing requirements. Inspection  
 12 by the department upon such a specific complaint made in  
 13 writing pertaining to licensing requirements shall--be is  
 14 limited to the specific area or condition of the health care  
 15 facility to which the complaint pertains.

16 (5) The department may consider as eligible for  
 17 licensure during the accreditation period any health care  
 18 facility, other than a hospital, that furnishes written  
 19 evidence, including the recommendation for future compliance  
 20 statements, of its accreditation by the joint commission on  
 21 accreditation of health care organizations. The department  
 22 may inspect a health care facility considered eligible for  
 23 licensure under this section to ensure compliance with state  
 24 licensure standards."

25 **Section 10.** Section 50-5-108, MCA, is amended to read:

1 "50-5-108. Injunction. (1) The department, ~~on advice of~~  
 2 ~~the--attorney-general,~~ may bring an action for injunction or  
 3 other process against any person to restrain ~~or prevent--the~~  
 4 ~~establishment,--conduct,--management,--or--operation--of--a~~  
 5 ~~facility which is in violation of any provision of--parts--1~~  
 6 ~~or 4 of this chapter;~~

7 (a) restrain a facility from engaging in a prohibited  
 8 activity that is endangering the health, safety, or welfare  
 9 of any individual under the care of the facility;

10 (b) enjoin a violation of part 1 or 2 of this chapter,  
 11 or a violation of a rule, license provision, or order  
 12 adopted or issued pursuant to part 1 or 2; or

13 (c) require compliance with part 1 or 2 of this chapter  
 14 or compliance with a rule, license provision, or order  
 15 adopted or issued pursuant to part 1 or 2.

16 (2) A court may award the department costs, reasonable  
 17 attorney fees, and expenses incurred in investigating,  
 18 abating, or enjoining a violation of or enforcing part 1 or  
 19 2 of this chapter or a rule, license provision, or order  
 20 adopted or issued pursuant to part 1 or 2.

21 (3) Costs, attorney fees, and expenses awarded to the  
 22 department pursuant to this section must be deposited in the  
 23 patient protection account provided for in [section 7]."

24 **Section 11.** Section 50-5-201, MCA, is amended to read:

25 "50-5-201. License requirements. (1) A facility or

licensee who contemplates considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No A person may not operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses ~~shall~~ must be displayed in a conspicuous place near the admitting office of the facility."

**Section 12.** Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified

by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without ~~his~~ the patient's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum--standards--are--not-being-met that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of

1 need requirements of part 3.

2 (4) The department may provide in its revocation order  
3 that the revocation will be in effect for up to 2 years. If  
4 this provision is appealed, it must be affirmed or reversed  
5 by the board."

6 **NEW SECTION. Section 13.** Repealer. Sections 50-5-109,  
7 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are  
8 repealed.

9 **NEW SECTION. Section 14.** Codification instruction. (1)  
10 [Sections 1 through 6] are intended to be codified as an  
11 integral part of Title 50, chapter 5, part 1, and the  
12 provisions of Title 50, chapter 5, part 1, apply to  
13 [sections 1 through 6].

14 (2) [Section 7] is intended to be codified as an  
15 integral part of Title 50, chapter 5, part 2, and the  
16 provisions of Title 50, chapter 5, part 2, apply to [section  
17 7].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0610, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

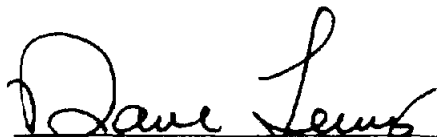
An act providing for the enforcement authority of the Department of Health and Environmental Sciences regrading Health Care Facilities; authorizing the Department of Health and Environmental Sciences to impose and collect civil and administrative penalties for statutory and regulatory violations; granting the Department administrative order authority; providing for receivership; clarifying criminal penalty provisions; creating a patient protection account; and providing for a statutory appropriation.

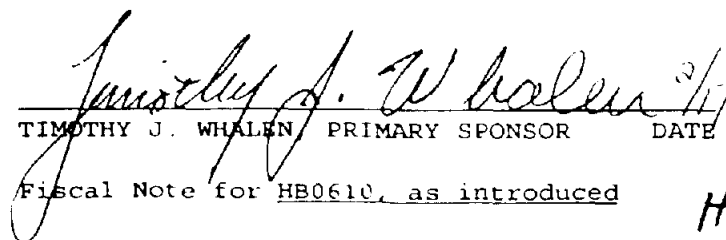
ASSUMPTIONS:

1. Civil and/or criminal penalties may be collected under provisions of this bill, but it is impossible to assume penalties.
2. Any penalties collected will be deposited in the new patient protection account and used for relocation of residents initiated by the Department of Health and Environmental Sciences and/or to pay for receivers.

FISCAL IMPACT:

Fiscal impact is unknown.

 2-16-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/17  
TIMOTHY J. WHALEN, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0610, as introduced

HB 610

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 610

INTRODUCED BY WHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO IMPOSE AND COLLECT CIVIL AND ADMINISTRATIVE PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS; CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230, AND 50-5-231, MCA."

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

NEW SECTION. **Section 1. Prohibited activities.** It is unlawful to:

- (1) operate a facility without a license;
- (2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

NEW SECTION. **Section 2. Civil penalties.** (1) A person who commits an act prohibited by [section 1] THAT THREATENS THE HEALTH OR SAFETY OF ONE OR MORE INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON is subject to a civil penalty not to exceed \$1,000 for each DAY THAT A FACILITY IS IN VIOLATION OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR 2. ~~Each--day--of--each--violation--constitutes--a separate--offense.~~ The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) A penalty collected under this section must be deposited in the ~~patient-protection-account-provided-for-in {section-7}~~ GENERAL FUND.

(3) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation as provided for in 50-5-108 or any other remedies available to it.

NEW SECTION. Section 3. Criminal penalties. (1) A person is guilty of an A CRIMINAL offense under this section if the person knowingly DOES ANY OF THE FOLLOWING AND BY DOING SO THREATENS THE HEALTH OR SAFETY OF ONE OR MORE INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON:

(a) commits an act prohibited by [section 1];

(b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person ~~guilty of an offense~~ CONVICTED under subsection (1) is subject to a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense FOR EACH DAY THAT A FACILITY IS IN VIOLATION OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR 2. ~~Each day of each violation~~

~~constitutes a separate violation.~~

(3) Action PROSECUTION under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(4) Venue for ~~an action to collect a~~ penalty PROSECUTION pursuant to this section is in the county in which the facility is located or in the first judicial district.

~~{5} A penalty collected under this section must be deposited in the patient protection account provided for in {section 7}~~

NEW SECTION. Section 4. Administrative enforcement --  
notice -- order for corrective action ~~administrative~~  
penalty. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation.  
THE NOTICE MUST INFORM THE ALLEGED VIOLATOR OF THE RIGHT TO A HEARING AND THAT THE CONTESTED CASE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, TITLE 2, CHAPTER 4,

PART 6, APPLY TO THE HEARING. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order, ~~or an order to pay an administrative penalty, or both.~~ The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Until issuance of a contrary decision by the board, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action ~~or an order for the assessment of an administrative penalty, or both.~~ As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; AND THE time limits for particular action in preventing, abating, or controlling the violation; ~~or the date by which the administrative penalty must be paid.~~ If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall declare the department order void.

~~(3) An order issued pursuant to this section may impose~~

~~an administrative penalty of not more than \$17000 for each violation. Each day of each violation constitutes a separate offense.~~

~~(4) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or the board, as appropriate, shall consider:~~

~~(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;~~

~~(b) whether the amount of the penalty serves as a deterrent relative to the alleged violator's ability to pay;~~

~~(c) the economic benefit or savings, if any, to the alleged violator as a result of noncompliance; and~~

~~(d) other matters as justice may require.~~

~~(5)(3)~~ The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

~~(6)(4)~~ Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before

1 the board for a hearing at a time and place specified in the  
2 notice and answer the charges; or

3 (b) initiate action under any other applicable  
4 provisions of part 1 or 2 of this chapter.

5 ~~{7}(5) This chapter does not prevent the department~~  
6 ~~from making efforts to obtain voluntary compliance through~~  
7 ~~warning, conference, or any other appropriate means. BEFORE~~  
8 ~~ACTING UNDER THIS SECTION, THE DEPARTMENT SHALL ATTEMPT TO~~  
9 ~~OBTAIN VOLUNTARY COMPLIANCE THROUGH A WARNING, CONFERENCE,~~  
10 ~~OR ANY OTHER APPROPRIATE AND REASONABLE METHOD.~~

11 ~~{8}(6)~~ In connection with a hearing held pursuant to  
12 this section, the board may and on application by a party  
13 shall compel the attendance of witnesses and the production  
14 of evidence on behalf of any party.

15 ~~{9} An administrative penalty collected pursuant to~~  
16 ~~this section must be deposited in the patient protection~~  
17 ~~account provided for in {section 7}.~~

18 NEW SECTION. Section 5. Receiverships. (1) Upon IF  
19 RECEIVERSHIP HAS NOT ALREADY BEEN INSTITUTED UNDER MEDICAID  
20 OR MEDICARE, UPON notice to the facility, the department may  
21 file a complaint in district court for receivership under  
22 any of the following conditions in addition to applicable  
23 conditions listed in 27-20-102:

24 (a) a facility is operating without a license and  
25 residents are in danger of serious physical or mental harm;

1 (b) a facility intending to close has not made  
2 arrangements within 30 days before closure for the orderly  
3 transfer of residents;

4 (c) a facility is abandoned by an owner;

5 (d) a life threatening situation exists for the  
6 residents of the facility; or

7 ~~{e} a facility has repeatedly violated the provisions~~  
8 ~~of Title 50, chapter 5, part 1 or 2, or both, or the rules~~  
9 ~~implementing those provisions.~~

10 ~~{2} If a condition specified in subsection {1}{c} or~~  
11 ~~{1}{d} exists, a resident or a resident's legal guardian or~~  
12 ~~family member may initiate receivership proceedings after~~  
13 ~~first giving reasonable notice of the proceedings to the~~  
14 ~~department and giving the department an opportunity to~~  
15 ~~respond to the conditions.~~

16 ~~{3}(2)~~ In the event of IF THE DEPARTMENT BELIEVES THERE  
17 IS an emergency, within the discretion of the department  
18 THAT PRESENTS OR MIGHT PRESENT AN IMMEDIATE AND SERIOUS  
19 THREAT TO THE HEALTH OR SAFETY OF PATIENTS OR RESIDENTS OF A  
20 FACILITY, a receiver may be appointed BY THE COURT upon an  
21 ex parte application by the department. If a receiver is  
22 appointed upon an ex parte application, notice must be given  
23 by the department to the facility within 24 hours of  
24 issuance of the receivership order and a hearing must be  
25 offered the facility by the court within 10 days of issuance

of the order to determine whether the order will be continued.

~~(4)~~(3) The department shall maintain a list of persons qualified to act as receivers.

~~(5)~~(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

~~(6)~~(5) Whenever possible, receivers must be paid from the income of the facility; however, receivers may be paid from the patient protection account provided for in [section 7]. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

~~(7)~~(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

NEW SECTION. **Section 6. Facility inspections.** (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

NEW SECTION. **Section 7. Patient protection account.**

(1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection account:

~~(a)--penalties-collected-pursuant-to-part-1-or-2-of-this chapter;~~

~~(b)~~(A) money received by the department in the form of

1 gifts, grants, reimbursements, or appropriations from any  
2 source that are intended to be used for the purposes of the  
3 account; and

4 ~~(c)~~(B) interest earned on money in the account.

5 (3) The funds deposited in the patient protection  
6 account may be used only:

7 (a) to administer ~~parts--1--and--2--of--this--chapter,~~  
8 ~~including-department-expenses-associated-with-administration~~  
9 A FACILITY DURING RECEIVERSHIP;

10 (b) to pay for the cost of department-initiated  
11 relocation of residents;

12 (c) to pay for receivers as provided under [section  
13 5(6)]~~;~~ AND

14 (D) TO REIMBURSE RESIDENTS OR PATIENTS FOR PERSONAL  
15 FUNDS IN OR ON THE FACILITY PREMISES OR IN A FACILITY  
16 ACCOUNT THAT ARE LOST BY A RESIDENT OR PATIENT THROUGH THE  
17 FAULT OF THE FACILITY.

18 **Section 8.** Section 17-7-502, MCA, is amended to read:

19 "17-7-502. Statutory appropriations -- definition --  
20 requisites for validity. (1) A statutory appropriation is an  
21 appropriation made by permanent law that authorizes spending  
22 by a state agency without the need for a biennial  
23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be  
25 effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be  
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory  
5 appropriation must specifically state that a statutory  
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing  
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
10 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
11 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
12 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
13 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
15 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
16 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
17 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
18 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
19 39-71-2504; 44-12-206; 44-13-102; [section 7]; 53-6-150;  
20 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
21 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
22 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
23 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

24 (4) There is a statutory appropriation to pay the  
25 principal, interest, premiums, and costs of issuing, paying,

and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

**Section 9.** Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards -- accreditation by joint commission. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 ~~through-4~~ and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 ~~through-4~~ after and 2 upon adoption.

(4) Any hospital that furnishes written evidence,

including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of ~~hospitals~~ health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, ~~except that the~~ for purposes of the licensing process. The department may, in addition to its inspection authority in [section 6], inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when ~~such~~ the complaints pertain to licensing requirements. Inspection by the department upon such a specific complaint made in writing pertaining to licensing requirements shall be is limited to the specific area or condition of the health care facility to which the complaint pertains.

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

**Section 10.** Section 50-5-108, MCA, is amended to read:

~~"50-5-108. Injunction. (1) The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter:~~

~~(a) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;~~

~~(b) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or~~

~~(c) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~(2) A court may award the department PREVAILING PARTY costs, reasonable attorney fees, and expenses incurred in investigating, abating, or enjoining a violation of or enforcing part 1 or 2 of this chapter or a rule, license provision, or order adopted or issued pursuant to part 1 or 2.~~

~~(3) Costs, attorney fees, and expenses awarded to the department pursuant to this section must be deposited in the patient protection account provided for in {section 7} GENERAL FUND."~~

**Section 11.** Section 50-5-201, MCA, is amended to read:

**"50-5-201. License requirements.** (1) A facility or licensee who contemplates considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No A person may ~~not~~ **NOT** operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses ~~shall~~ must be displayed in a conspicuous place near the admitting office of the facility."

**Section 12.** Section 50-5-207, MCA, is amended to read:

**"50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards

1 pertaining to it prescribed under 50-5-103.

2 (b) The staff is insufficient in number or unqualified  
3 by lack of training or experience.

4 (c) The applicant or any person managing it has been  
5 convicted of a felony and denial of a license on that basis  
6 is consistent with 37-1-203 or the applicant otherwise shows  
7 evidence of character traits inimical to the health and  
8 safety of patients or residents.

9 (d) The applicant does not have the financial ability  
10 to operate the facility in accordance with law or rules or  
11 standards adopted by the department.

12 (e) There is cruelty or indifference affecting the  
13 welfare of the patients or residents.

14 (f) There is misappropriation of the property or funds  
15 of a patient or resident.

16 (g) There is conversion of the property of a patient or  
17 resident without ~~his~~ the patient's OR RESIDENT'S consent.

18 (h) Any provision of parts 1 through 3 is violated.

19 (2) The department may reduce a license to provisional  
20 status if as a result of an inspection it is determined  
21 ~~minimum-standards-are-not-being-met~~ that the facility has  
22 failed to comply with a provision of part 1 or 2 of this  
23 chapter or has failed to comply with a rule, license  
24 provision, or order adopted or issued pursuant to part 1 or  
25 2.

1 (3) The denial, suspension, or revocation of a health  
2 care facility license is not subject to the certificate of  
3 need requirements of part 3.

4 (4) The department may provide in its revocation order  
5 that the revocation will be in effect for up to 2 years. If  
6 this provision is appealed, it must be affirmed or reversed  
7 by the board OR COURT."

8 NEW SECTION. Section 13. Repealer. Sections 50-5-109,  
9 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are  
10 repealed.

11 NEW SECTION. Section 14. Codification instruction. (1)  
12 [Sections 1 through 6] are intended to be codified as an  
13 integral part of Title 50, chapter 5, part 1, and the  
14 provisions of Title 50, chapter 5, part 1, apply to  
15 [sections 1 through 6].

16 (2) [Section 7] is intended to be codified as an  
17 integral part of Title 50, chapter 5, part 2, and the  
18 provisions of Title 50, chapter 5, part 2, apply to [section  
19 7].

-End-

HOUSE BILL NO. 610

INTRODUCED BY WHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO IMPOSE AND COLLECT CIVIL AND ADMINISTRATIVE PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS; CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230, AND 50-5-231, MCA."

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

NEW SECTION. **Section 1.** Prohibited activities. It is unlawful to:

- (1) operate a facility without a license;
- (2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

NEW SECTION. **Section 2.** Civil penalties. (1) A person who commits an act prohibited by [section 1] THAT THREATENS THE HEALTH OR SAFETY OF ONE OR MORE INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON is subject to a civil penalty not to exceed \$1,000 for each DAY THAT A FACILITY IS IN violation OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR 2. ~~Each--day--of--each--violation--constitutes--a separate--offense~~ The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 3  
March 22, 1993

Page 2 of 3  
March 22, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 610 (first reading copy -- blue), respectfully report that House Bill No. 610 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Eck*  
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 8.

Strike: "AND ADMINISTRATIVE"

2. Page 2, lines 5 through 7.

Following: "[section 1]" on line 5

Strike: remainder of line 5 through "PERSON" on line 7

3. Page 2, line 19.

Following: line 18

Insert: "(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require."

Renumber: subsequent subsections

4. Page 2, line 21.

Strike: "GENERAL FUND"

Insert: "patient protection account provided for in [section 7]"

5. Page 3, line 3.

Following: "knowingly"

Insert: "conceals material information about the operation of the facility or"

6. Page 4, line 2.

Following: line 1

Insert: "(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of

physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require."

Renumber: subsequent subsections

7. Page 4, line 12.

Following: line 11

Insert: "(6) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7]."

8. Page 7, line 10.

Following: "APPROPRIATE"

Strike: "AND REASONABLE METHOD"

Insert: "means"

9. Page 10, line 25.

Following: line 24

Insert: "(a) penalties collected pursuant to part 1 or 2 of this chapter;"

Renumber: subsequent subsections

10. Page 11, lines 7 through 9.

Strike: subsection (a) in its entirety

Insert: "(a) to pay for the costs of a receivership; and"

11. Page 11, line 11.

Following: "residents"

Strike: ";

Insert: "."

12. Page 11, lines 12 through 17

Strike: subsections (c) and (d) in their entirety

13. Page 15, line 1.

Strike: "(1)"

14. Page 15, line 7.

Strike: "(a)"

Insert: "(1)"

15. Page 15, line 10.

Strike: "(b)"

Insert: "(2)"

SENATE

H B 610

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*Sen. Towe*  
Amd. Coord.  
Sec. of Senate

*Sen. Towe*  
Senator Carrying Bill

641722SC.San

Page 3 of 3  
March 22, 1993

16. Page 15, line 13.

Strike: "(C)"

Insert: "(3)"

17. Page 15, lines 16 through 25.

Strike: subsections (2) and (3) in their entirety

-END-

HOUSE BILL NO. 610

INTRODUCED BY WHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO IMPOSE AND COLLECT CIVIL AND ADMINISTRATIVE PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS; CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230, AND 50-5-231, MCA."

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

NEW SECTION. Section 1. Prohibited activities. It is unlawful to:

- (1) operate a facility without a license;
- (2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

NEW SECTION. Section 2. Civil penalties. (1) A person who commits an act prohibited by (section 1) THAT THREATENS THE HEALTH OR SAFETY OF ONE OR MORE INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON is subject to a civil penalty not to exceed \$1,000 for each DAY THAT A FACILITY IS IN violation OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR 2. ~~Each--day--of--each--violation--constitutes--a separate--offense.~~ The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) A penalty collected under this section must be deposited in the ~~patient-protection-account-provided-for-in {section-7}~~ GENERAL FUND.

(3) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation as provided for in 50-5-108 or any other remedies available to it.

1        NEW SECTION. Section 3. Criminal penalties. (1) A  
 2 person is guilty of an A CRIMINAL offense under this section  
 3 if the person knowingly DOES ANY OF THE FOLLOWING AND BY  
 4 DOING SO THREATENS THE HEALTH OR SAFETY OF ONE OR MORE  
 5 INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON:

6        (a) commits an act prohibited by [section 1];  
 7        (b) omits material information or makes a false  
 8 statement or representation in an application, record,  
 9 report, or other document filed, maintained, or used for  
 10 compliance with the provisions of part 1 or 2 of this  
 11 chapter or with rules, license provisions, or orders adopted  
 12 or issued pursuant to part 1 or 2; or  
 13        (c) destroys, alters, conceals, or fails to file or  
 14 maintain any record, information, or application required to  
 15 be maintained or filed in compliance with a provision of  
 16 part 1 or 2 of this chapter or in compliance with a rule,  
 17 license provision, or order adopted or issued pursuant to  
 18 part 1 or 2.

19        (2) A person guilty--of--an--offense CONVICTED under  
 20 subsection (1) is subject to a fine of not more than \$1,000  
 21 for the first offense and not more than \$2,000 for each  
 22 subsequent offense FOR EACH DAY THAT A FACILITY IS IN  
 23 VIOLATION OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR  
 24 OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED  
 25 PURSUANT TO PART 1 OR 2. Each--day--of--each-violation

1        ~~constitutes a separate violation.~~

2        (3) Action PROSECUTION under this section does not bar  
 3 enforcement under any other section of this chapter or  
 4 pursuit of any other appropriate remedy by the department.

5        (4) Venue for ~~an action to collect a~~ penalty  
 6 PROSECUTION pursuant to this section is in the county in  
 7 which the facility is located or in the first judicial  
 8 district.

9        ~~{5}--A--penalty--collected--under--this--section--must--be~~  
 10 ~~deposited in the patient protection account provided for in~~  
 11 ~~{section 7}.~~

12        NEW SECTION. Section 4. Administrative enforcement --  
 13 notice -- order for corrective action ----administrative  
 14 penalty. (1) If the department believes that a violation of  
 15 a provision of part 1 or 2 of this chapter or of a rule  
 16 adopted or a condition or limitation imposed by a license  
 17 issued pursuant to part 1 or 2 has occurred, it may serve  
 18 written notice on the alleged violator or the violator's  
 19 agent personally or by certified mail. The notice must  
 20 specify the provision of part 1 or 2 of this chapter or the  
 21 rule or license condition or limitation alleged to have been  
 22 violated and the facts alleged to constitute the violation.  
 23 THE NOTICE MUST INFORM THE ALLEGED VIOLATOR OF THE RIGHT TO  
 24 A HEARING AND THAT THE CONTESTED CASE PROVISIONS OF THE  
 25 MONTANA ADMINISTRATIVE PROCEDURE ACT, TITLE 2, CHAPTER 4,

1 PART 6, APPLY TO THE HEARING. The notice may include an  
 2 order to take necessary corrective action, including ceasing  
 3 new admissions, relocating residents, or ceasing the  
 4 violation within a reasonable period of time stated in the  
 5 order, ~~or an order to pay an administrative penalty, or~~  
 6 both. The order becomes final unless, within 30 days after  
 7 the notice is received, the person named requests in writing  
 8 a hearing before the board. On receipt of the request, the  
 9 board shall schedule a hearing. Until issuance of a contrary  
 10 decision by the board, a department order concerning  
 11 corrective action remains effective and enforceable.

12 (2) If, after a hearing held under subsection (1), the  
 13 board finds that a violation has occurred, it shall issue an  
 14 appropriate order for the prevention, abatement, or control  
 15 of the violation involved or the taking of other corrective  
 16 action ~~or an order for the assessment of an administrative~~  
 17 ~~penalty, or both.~~ As appropriate, an order issued as part of  
 18 a notice or after a hearing may prescribe the date by which  
 19 the violation must cease; AND THE time limits for particular  
 20 action in preventing, abating, or controlling the violation;  
 21 ~~or the date by which the administrative penalty must be~~  
 22 paid. If, after a hearing on an order contained in a notice,  
 23 the board finds that a violation has not occurred or is not  
 24 occurring, it shall declare the department order void.

25 (3) ~~An order issued pursuant to this section may impose~~

1 ~~an administrative penalty of not more than \$1,000 for each~~  
 2 ~~violation. Each day of each violation constitutes a separate~~  
 3 ~~offense.~~

4 (4) ~~In determining the amount of penalty to be assessed~~  
 5 ~~for an alleged violation under this section, the department~~  
 6 ~~or the board, as appropriate, shall consider:~~

7 (a) ~~the gravity of the violation in terms of the degree~~  
 8 ~~of physical or mental harm to a resident or patient; the~~  
 9 ~~degree of harm to the health, safety, rights, security, or~~  
 10 ~~welfare of a resident or patient; and the degree of~~  
 11 ~~deviation committed by the facility from a requirement~~  
 12 ~~imposed by part 1 or 2 of this chapter or by a rule, license~~  
 13 ~~provision, or order adopted or issued pursuant to part 1 or~~  
 14 ~~2;~~

15 (b) ~~whether the amount of the penalty serves as a~~  
 16 ~~deterrent relative to the alleged violator's ability to pay;~~

17 (c) ~~the economic benefit or savings, if any, to the~~  
 18 ~~alleged violator as a result of noncompliance; and~~

19 (d) ~~other matters as justice may require.~~

20 (5)(3) The contested case provisions of the Montana  
 21 Administrative Procedure Act, Title 2, chapter 4, part 6,  
 22 apply to a hearing conducted pursuant to this section.

23 (6)(4) Instead of or in addition to issuing the order  
 24 provided for in subsection (1), the department may:

25 (a) require that the alleged violators appear before

the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

~~{7}{5} This--chapter--does--not--prevent--the--department from--making--efforts--to--obtain--voluntary--compliance--through warning,--conference,--or--any--other--appropriate--means. BEFORE ACTING UNDER THIS SECTION, THE DEPARTMENT SHALL ATTEMPT TO OBTAIN VOLUNTARY COMPLIANCE THROUGH A WARNING, CONFERENCE, OR ANY OTHER APPROPRIATE AND REASONABLE METHOD.~~

~~{8}{6}~~ In connection with a hearing held pursuant to this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.

~~{9}--An--administrative--penalty--collected--pursuant--to this--section--must--be--deposited--in--the--patient--protection account--provided--for--in--{section-7}.~~

**NEW SECTION. Section 5. Receiverships.** (1) Upon IF RECEIVERSHIP HAS NOT ALREADY BEEN INSTITUTED UNDER MEDICAID OR MEDICARE, UPON notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner;

(d) a life threatening situation exists for the residents of the facility; or

~~{e}--a--facility--has--repeatedly--violated--the--provisions of--Title-50,--chapter-5,--part-1--or--2,--or--both,--or--the--rules implementing--those--provisions;~~

~~{2}--If--a--condition--specified--in--subsection--{1}{c}--or {1}{d}--exists,--a--resident--or--a--resident's--legal--guardian--or family--member--may--initiate--receivership--proceedings--after first--giving--reasonable--notice--of--the--proceedings--to--the department--and--giving--the--department--an--opportunity--to respond--to--the--conditions;~~

~~{3}{2}~~ In the event of IF THE DEPARTMENT BELIEVES THERE IS an emergency, within the discretion of the department THAT PRESENTS OR MIGHT PRESENT AN IMMEDIATE AND SERIOUS THREAT TO THE HEALTH OR SAFETY OF PATIENTS OR RESIDENTS OF A FACILITY, a receiver may be appointed BY THE COURT upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance

of the order to determine whether the order will be continued.

{4}{3} The department shall maintain a list of persons qualified to act as receivers.

{5}{4} The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

{6}{5} Whenever possible, receivers must be paid from the income of the facility; however, receivers may be paid from the patient protection account provided for in [section 7]. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

{7}{6} The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

NEW SECTION. Section 6. Facility inspections. (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

NEW SECTION. Section 7. Patient protection account. (1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection account:

~~{a}--penalties-collected-pursuant-to-part-1-or-2-of-this chapter;~~

{b}{A} money received by the department in the form of

1 gifts, grants, reimbursements, or appropriations from any  
2 source that are intended to be used for the purposes of the  
3 account; and

4 {e}[B] interest earned on money in the account.

5 (3) The funds deposited in the patient protection  
6 account may be used only:

7 (a) to administer ~~parts--1--and--2--of--this--chapter,~~  
8 ~~including-department-expenses-associated-with-administration~~  
9 A FACILITY DURING RECEIVERSHIP;

10 (b) to pay for the cost of department-initiated  
11 relocation of residents;

12 (c) to pay for receivers as provided under [section  
13 5(6)]~~;~~ AND

14 (D) TO REIMBURSE RESIDENTS OR PATIENTS FOR PERSONAL  
15 FUNDS IN OR ON THE FACILITY PREMISES OR IN A FACILITY  
16 ACCOUNT THAT ARE LOST BY A RESIDENT OR PATIENT THROUGH THE  
17 FAULT OF THE FACILITY.

18 **Section 8.** Section 17-7-502, MCA, is amended to read:

19 "17-7-502. Statutory appropriations -- definition --  
20 requisites for validity. (1) A statutory appropriation is an  
21 appropriation made by permanent law that authorizes spending  
22 by a state agency without the need for a biennial  
23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be  
25 effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be  
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory  
5 appropriation must specifically state that a statutory  
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing  
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
10 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
11 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
12 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
13 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
15 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
16 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
17 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
18 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
19 39-71-2504; 44-12-206; 44-13-102; [section 7]; 53-6-150;  
20 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
21 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
22 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
23 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

24 (4) There is a statutory appropriation to pay the  
25 principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,  
 2 that have been authorized and issued pursuant to the laws of  
 3 Montana. Agencies that have entered into agreements  
 4 authorized by the laws of Montana to pay the state  
 5 treasurer, for deposit in accordance with 17-2-101 through  
 6 17-2-107, as determined by the state treasurer, an amount  
 7 sufficient to pay the principal and interest as due on the  
 8 bonds or notes have statutory appropriation authority for  
 9 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
 10 567, L. 1991, the inclusion of 19-6-709 terminates upon  
 11 death of last recipient eligible for supplemental benefit;  
 12 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
 13 22-3-811 terminates June 30, 1993.)"

14 **Section 9.** Section 50-5-103, MCA, is amended to read:

15 "50-5-103. Rules and standards -- accreditation by  
 16 joint commission. (1) The department shall promulgate and  
 17 adopt rules and minimum standards for implementation of  
 18 parts 1 through-4 and 2.

19 (2) Any facility covered by this chapter shall comply  
 20 with the state and federal requirements relating to  
 21 construction, equipment, and fire and life safety.

22 (3) The department shall extend a reasonable time for  
 23 compliance with rules for parts 1 through-4-after and 2 upon  
 24 adoption.

25 (4) Any hospital that furnishes written evidence,

1 including the recommendation for future compliance  
 2 statements to the department of its accreditation granted by  
 3 the joint commission on accreditation of hospitals health  
 4 care organizations, is eligible for licensure in the state  
 5 for the accreditation period and may not be subjected to an  
 6 inspection by the department; ~~except that the~~ for purposes  
 7 of the licensing process. The department may, in addition to  
 8 its inspection authority in [section 6], inspect any  
 9 licensed health care facility to answer specific complaints  
 10 made in writing by any person against the facility when such  
 11 the complaints pertain to licensing requirements. Inspection  
 12 by the department upon such a specific complaint made in  
 13 writing pertaining to licensing requirements shall be is  
 14 limited to the specific area or condition of the health care  
 15 facility to which the complaint pertains.

16 (5) The department may consider as eligible for  
 17 licensure during the accreditation period any health care  
 18 facility, other than a hospital, that furnishes written  
 19 evidence, including the recommendation for future compliance  
 20 statements, of its accreditation by the joint commission on  
 21 accreditation of health care organizations. The department  
 22 may inspect a health care facility considered eligible for  
 23 licensure under this section to ensure compliance with state  
 24 licensure standards."

25 **Section 10.** Section 50-5-108, MCA, is amended to read:

1       ~~"50-5-108. Injunction. (1) The department, on advice of~~  
 2       ~~the attorney general, may bring an action for injunction or~~  
 3       ~~other process against any person to restrain or prevent the~~  
 4       ~~establishment, conduct, management, or operation of a~~  
 5       ~~facility which is in violation of any provision of parts 1~~  
 6       ~~or 4 of this chapter:~~

7       ~~(a) restrain a facility from engaging in a prohibited~~  
 8       ~~activity that is endangering the health, safety, or welfare~~  
 9       ~~of any individual under the care of the facility;~~

10       ~~(b) enjoin a violation of part 1 or 2 of this chapter,~~  
 11       ~~or a violation of a rule, license provision, or order~~  
 12       ~~adopted or issued pursuant to part 1 or 2; or~~

13       ~~(c) require compliance with part 1 or 2 of this chapter~~  
 14       ~~or compliance with a rule, license provision, or order~~  
 15       ~~adopted or issued pursuant to part 1 or 2.~~

16       ~~(2) A court may award the department PREVAILING PARTY~~  
 17       ~~costs, reasonable attorney fees, and expenses incurred in~~  
 18       ~~investigating, abating, or enjoining a violation of or~~  
 19       ~~enforcing part 1 or 2 of this chapter or a rule, license~~  
 20       ~~provision, or order adopted or issued pursuant to part 1 or~~  
 21       ~~2.~~

22       ~~(3) Costs, attorney fees, and expenses awarded to the~~  
 23       ~~department pursuant to this section must be deposited in the~~  
 24       ~~patient protection account provided for in {section 7}~~  
 25       ~~GENERAL FUND."~~

1       **Section 11.** Section 50-5-201, MCA, is amended to read:

2       ~~"50-5-201. License requirements. (1) A facility or~~  
 3       ~~licensee who contemplates considering construction of or~~  
 4       ~~alteration or addition to a health care facility shall~~  
 5       ~~submit plans and specifications to the department for~~  
 6       ~~preliminary inspection and approval prior to commencing~~  
 7       ~~construction.~~

8       ~~(2) No A person may not NOT operate a health care~~  
 9       ~~facility unless the facility is licensed by the department.~~  
 10       ~~Licenses may be issued for a period of 1 to 3 years in~~  
 11       ~~duration. A license is valid only for the person and~~  
 12       ~~premises for which it was issued. A license may not be sold,~~  
 13       ~~assigned, or transferred.~~

14       ~~(3) Upon discontinuance of the operation or upon~~  
 15       ~~transfer of ownership of a facility, the license must be~~  
 16       ~~returned to the department.~~

17       ~~(4) Licenses shall must be displayed in a conspicuous~~  
 18       ~~place near the admitting office of the facility."~~

19       **Section 12.** Section 50-5-207, MCA, is amended to read:

20       ~~"50-5-207. Denial, suspension, or revocation of health~~  
 21       ~~care facility license -- provisional license. (1) The~~  
 22       ~~department may deny, suspend, or revoke a health care~~  
 23       ~~facility license if any of the following circumstances~~  
 24       ~~exist:~~

25       ~~(a) The facility fails to meet the minimum standards~~

1 pertaining to it prescribed under 50-5-103.

2 (b) The staff is insufficient in number or unqualified  
3 by lack of training or experience.

4 (c) The applicant or any person managing it has been  
5 convicted of a felony and denial of a license on that basis  
6 is consistent with 37-1-203 or the applicant otherwise shows  
7 evidence of character traits inimical to the health and  
8 safety of patients or residents.

9 (d) The applicant does not have the financial ability  
10 to operate the facility in accordance with law or rules or  
11 standards adopted by the department.

12 (e) There is cruelty or indifference affecting the  
13 welfare of the patients or residents.

14 (f) There is misappropriation of the property or funds  
15 of a patient or resident.

16 (g) There is conversion of the property of a patient or  
17 resident without his the patient's OR RESIDENT'S consent.

18 (h) Any provision of parts 1 through 3 is violated.

19 (2) The department may reduce a license to provisional  
20 status if as a result of an inspection it is determined  
21 minimum standards are not being met that the facility has  
22 failed to comply with a provision of part 1 or 2 of this  
23 chapter or has failed to comply with a rule, license  
24 provision, or order adopted or issued pursuant to part 1 or  
25 2.

1 (3) The denial, suspension, or revocation of a health  
2 care facility license is not subject to the certificate of  
3 need requirements of part 3.

4 (4) The department may provide in its revocation order  
5 that the revocation will be in effect for up to 2 years. If  
6 this provision is appealed, it must be affirmed or reversed  
7 by the board OR COURT."

8 NEW SECTION. Section 13. Repealer. Sections 50-5-109,  
9 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are  
10 repealed.

11 NEW SECTION. Section 14. Codification instruction. (1)  
12 [Sections 1 through 6] are intended to be codified as an  
13 integral part of Title 50, chapter 5, part 1, and the  
14 provisions of Title 50, chapter 5, part 1, apply to  
15 [sections 1 through 6].

16 (2) [Section 7] is intended to be codified as an  
17 integral part of Title 50, chapter 5, part 2, and the  
18 provisions of Title 50, chapter 5, part 2, apply to [section  
19 7].

-End-

## 1 HOUSE BILL NO. 610

2 INTRODUCED BY WHALEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
5 ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND  
6 ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES;  
7 AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
8 SCIENCES TO IMPOSE AND COLLECT CIVIL AND--ADMINISTRATIVE  
9 PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING  
10 THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR  
11 RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS;  
12 CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A  
13 STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502,  
14 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND  
15 REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230,  
16 AND 50-5-231, MCA."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. **Section 1. Prohibited activities.** It is  
20 unlawful to:

21 (1) operate a facility without a license;

22 (2) prevent, interfere with, or impede department  
23 investigation, department enforcement, department  
24 examination of relevant books and records, or activities of  
25 the department concerning the preservation of evidence; or

1 (3) violate any provision of part 1 or 2 of this  
2 chapter or violate a rule, license provision, or order  
3 adopted or issued pursuant to part 1 or 2.

4 NEW SECTION. **Section 2. Civil penalties.** (1) A person  
5 who commits an act prohibited by [section 1] ~~THAT-THREATENS~~  
6 ~~THE-HEALTH-OR-SAFETY-OF-ONE-OR-MORE-INDIVIDUALS-ENTRUSTED-TO~~  
7 ~~THE-CARE-OF-THE-PERSON~~ is subject to a civil penalty not to  
8 exceed \$1,000 for each DAY THAT A FACILITY IS IN violation  
9 OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR OF A RULE,  
10 LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO  
11 PART 1 OR 2. ~~Each--day--of--each--violation--constitutes--a~~  
12 ~~separate--offense.~~ The department or, upon request of the  
13 department, the county attorney of the county in which the  
14 health care facility in question is located may petition the  
15 court to impose the civil penalty. Venue for an action to  
16 collect a civil penalty pursuant to this section is in the  
17 county in which the facility is located or in the first  
18 judicial district.

19 (2) IN DETERMINING THE AMOUNT OF PENALTY TO BE ASSESSED  
20 FOR AN ALLEGED VIOLATION UNDER THIS SECTION, THE COURT SHALL  
21 CONSIDER:

22 (A) THE GRAVITY OF THE VIOLATION IN TERMS OF THE DEGREE  
23 OF PHYSICAL OR MENTAL HARM TO A RESIDENT OR PATIENT; THE  
24 DEGREE OF HARM TO THE HEALTH, SAFETY, RIGHTS, SECURITY, OR  
25 WELFARE OF A RESIDENT OR PATIENT; AND THE DEGREE OF

DEVIATION COMMITTED BY THE FACILITY FROM A REQUIREMENT  
IMPOSED BY PART 1 OR 2 OF THIS CHAPTER OR BY A RULE, LICENSE  
PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR  
2;

(B) OTHER MATTERS AS JUSTICE MAY REQUIRE.

{2}{3} A penalty collected under this section must be  
deposited in the patient-protection-account-provided-for-in  
{section-7} ~~GENERAL-FUND~~ PATIENT PROTECTION ACCOUNT PROVIDED  
FOR IN [SECTION 7].

{3}{4} In addition to or exclusive of the remedy  
provided in subsection (1), the department may pursue  
remedies available for a violation as provided for in  
50-5-108 or any other remedies available to it.

NEW SECTION. Section 3. Criminal penalties. (1) A  
person is guilty of an A CRIMINAL offense under this section  
if the person knowingly CONCEALS MATERIAL INFORMATION ABOUT  
THE OPERATION OF THE FACILITY OR DOES ANY OF THE FOLLOWING  
AND BY DOING SO THREATENS THE HEALTH OR SAFETY OF ONE OR  
MORE INDIVIDUALS ENTRUSTED TO THE CARE OF THE PERSON:

(a) commits an act prohibited by [section 1];

(b) omits material information or makes a false  
statement or representation in an application, record,  
report, or other document filed, maintained, or used for  
compliance with the provisions of part 1 or 2 of this  
chapter or with rules, license provisions, or orders adopted

or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or  
maintain any record, information, or application required to  
be maintained or filed in compliance with a provision of  
part 1 or 2 of this chapter or in compliance with a rule,  
license provision, or order adopted or issued pursuant to  
part 1 or 2.

(2) A person guilty--of--an--offense CONVICTED under  
subsection (1) is subject to a fine of not more than \$1,000  
for the first offense and not more than \$2,000 for each  
subsequent offense FOR EACH DAY THAT A FACILITY IS IN  
VIOLATION OF A PROVISION OF PART 1 OR 2 OF THIS CHAPTER OR  
OF A RULE, LICENSE PROVISION, OR ORDER ADOPTED OR ISSUED  
PURSUANT TO PART 1 OR 2. Each--day--of--each--violation  
constitutes-a-separate-violation.

(3) IN DETERMINING THE AMOUNT OF PENALTY TO BE ASSESSED  
FOR AN ALLEGED VIOLATION UNDER THIS SECTION, THE COURT SHALL  
CONSIDER:

(A) THE GRAVITY OF THE VIOLATION IN TERMS OF THE DEGREE  
OF PHYSICAL OR MENTAL HARM TO A RESIDENT OR PATIENT; THE  
DEGREE OF HARM TO THE HEALTH, SAFETY, RIGHTS, SECURITY, OR  
WELFARE OF A RESIDENT OR PATIENT; AND THE DEGREE OF  
DEVIATION COMMITTED BY THE FACILITY FROM A REQUIREMENT  
IMPOSED BY PART 1 OR 2 OF THIS CHAPTER OR BY A RULE, LICENSE  
PROVISION, OR ORDER ADOPTED OR ISSUED PURSUANT TO PART 1 OR

2;

(B) OTHER MATTERS AS JUSTICE MAY REQUIRE.

~~{3}~~(4) Action PROSECUTION under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

~~{4}~~(5) Venue for ~~an--action--to--collect--a--penalty~~ PROSECUTION pursuant to this section is in the county in which the facility is located or in the first judicial district.

~~{5}--A--penalty--collected--under--this--section--must--be deposited--in--the--patient--protection--account--provided--for--in {section-7}--~~

(6) A PENALTY COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE PATIENT PROTECTION ACCOUNT PROVIDED FOR IN [SECTION 7].

NEW SECTION. Section 4. Administrative enforcement --  
notice -- order for corrective action ---administrative penalty. (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been

violated and the facts alleged to constitute the violation.  
THE NOTICE MUST INFORM THE ALLEGED VIOLATOR OF THE RIGHT TO A HEARING AND THAT THE CONTESTED CASE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, TITLE 2, CHAPTER 4, PART 6, APPLY TO THE HEARING. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order, ~~or an order to pay an administrative penalty, or both.~~ The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Until issuance of a contrary decision by the board, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action ~~or an order for the assessment of an administrative penalty, or both.~~ As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; AND THE time limits for particular action in preventing, abating, or controlling the violation; ~~or the date by which the administrative penalty must be~~

paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall declare the department order void.

~~(3)--An order issued pursuant to this section may impose an administrative penalty of not more than \$1,000 for each violation. Each day of each violation constitutes a separate offense.~~

~~(4)--In determining the amount of penalty to be assessed for an alleged violation under this section, the department or the board, as appropriate, shall consider:~~

~~(a)--the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;~~

~~(b)--whether the amount of the penalty serves as a deterrent relative to the alleged violator's ability to pay;~~

~~(c)--the economic benefit or savings, if any, to the alleged violator as a result of noncompliance; and~~

~~(d)--other matters as justice may require.~~

~~(5)(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6,~~

apply to a hearing conducted pursuant to this section.

~~(6)(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:~~

~~(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges; or~~

~~(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.~~

~~(7)(5) This chapter does not prevent the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. BEFORE ACTING UNDER THIS SECTION, THE DEPARTMENT SHALL ATTEMPT TO OBTAIN VOLUNTARY COMPLIANCE THROUGH A WARNING, CONFERENCE, OR ANY OTHER APPROPRIATE AND REASONABLE METHOD MEANS.~~

~~(8)(6) In connection with a hearing held pursuant to this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.~~

~~(9)--An administrative penalty collected pursuant to this section must be deposited in the patient protection account provided for in {section 7}.~~

NEW SECTION. Section 5. Receiverships. (1) Upon IF RECEIVERSHIP HAS NOT ALREADY BEEN INSTITUTED UNDER MEDICAID OR MEDICARE, UPON notice to the facility, the department may file a complaint in district court for receivership under

1 any of the following conditions in addition to applicable  
2 conditions listed in 27-20-102:

3 (a) a facility is operating without a license and  
4 residents are in danger of serious physical or mental harm;

5 (b) a facility intending to close has not made  
6 arrangements within 30 days before closure for the orderly  
7 transfer of residents;

8 (c) a facility is abandoned by an owner;

9 (d) a life threatening situation exists for the  
10 residents of the facility; or

11 ~~(e) a facility has repeatedly violated the provisions~~  
12 ~~of Title 50, chapter 5, part 1 or 2, or both, or the rules~~  
13 ~~implementing those provisions;~~

14 ~~(2) if a condition specified in subsection (i)(c) or~~  
15 ~~(i)(d) exists, a resident or a resident's legal guardian or~~  
16 ~~family member may initiate receivership proceedings after~~  
17 ~~first giving reasonable notice of the proceedings to the~~  
18 ~~department and giving the department an opportunity to~~  
19 ~~respond to the conditions;~~

20 ~~(3)(2) In the event of~~ IF THE DEPARTMENT BELIEVES THERE  
21 IS an emergency, within the discretion of the department  
22 THAT PRESENTS OR MIGHT PRESENT AN IMMEDIATE AND SERIOUS  
23 THREAT TO THE HEALTH OR SAFETY OF PATIENTS OR RESIDENTS OF A  
24 FACILITY, a receiver may be appointed BY THE COURT upon an  
25 ex parte application by the department. If a receiver is

1 appointed upon an ex parte application, notice must be given  
2 by the department to the facility within 24 hours of  
3 issuance of the receivership order and a hearing must be  
4 offered the facility by the court within 10 days of issuance  
5 of the order to determine whether the order will be  
6 continued.

7 ~~(4)(3)~~ The department shall maintain a list of persons  
8 qualified to act as receivers.

9 ~~(5)(4)~~ The selection, appointment, and removal of  
10 receivers must be consistent with Title 27, chapter 20,  
11 parts 2 and 3.

12 ~~(6)(5)~~ Whenever possible, receivers must be paid from  
13 the income of the facility; however, receivers may be paid  
14 from the patient protection account provided for in [section  
15 7]. The court shall direct the amount of payments to be made  
16 to the receiver, the payments to be made by the receiver,  
17 and the order of payments made to the receiver or to other  
18 entities. Payments owed to a facility that are made to the  
19 receiver must be used to discharge any obligation of the  
20 entity making the payments owed to the facility.

21 ~~(7)(6)~~ The powers and duties of the receiver include:

22 (a) the duty to protect the health, welfare, and safety  
23 of the residents;

24 (b) the power to hire, discipline, and fire staff;

25 (c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

**NEW SECTION. Section 6. Facility inspections.** (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

**NEW SECTION. Section 7. Patient protection account.**

(1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection

account:

~~{a}--penalties-collected-pursuant-to-part-1-or-2-of-this chapter;~~

(A) PENALTIES COLLECTED PURSUANT TO PART 1 OR 2 OF THIS CHAPTER;

~~{b}{A}{B}~~ money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account; and

~~{c}{B}{C}~~ interest earned on money in the account.

(3) The funds deposited in the patient protection account may be used only:

~~{a}--to-administer--parts--1--and--2--of--this--chapter, including-department-expenses-associated-with-administration A-FACILITY-DURING-RECEIVERSHIP;~~

(A) TO PAY FOR THE COSTS OF A RECEIVERSHIP; AND

(b) to pay for the cost of department-initiated relocation of residents;

~~{c}--to-pay-for-receivers--as--provided--under--{section 5{6}}{7}-AND~~

~~{B}--TO--REIMBURSE--RESIDENTS--OR--PATIENTS--FOR--PERSONAL FUNDS--IN--OR--ON--THE--FACILITY--PREMISES--OR--IN--A--FACILITY ACCOUNT--THAT--ARE--LOST--BY--A--RESIDENT--OR--PATIENT--THROUGH--THE FAULT--OF--THE--FACILITY.~~

**Section 8.** Section 17-7-502, MCA, is amended to read:

1       **"17-7-502. Statutory appropriations -- definition --**  
 2       **requisites for validity.** (1) A statutory appropriation is an  
 3       appropriation made by permanent law that authorizes spending  
 4       by a state agency without the need for a biennial  
 5       legislative appropriation or budget amendment.

6       (2) Except as provided in subsection (4), to be  
 7       effective, a statutory appropriation must comply with both  
 8       of the following provisions:

9       (a) The law containing the statutory authority must be  
 10      listed in subsection (3).

11      (b) The law or portion of the law making a statutory  
 12      appropriation must specifically state that a statutory  
 13      appropriation is made as provided in this section.

14      (3) The following laws are the only laws containing  
 15      statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 16      10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 17      15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
 18      15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
 19      17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
 20      17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
 21      19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 22      19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;  
 23      20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
 24      23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
 25      23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;

1       39-71-2504; 44-12-206; 44-13-102; [section 7]; 53-6-150;  
 2       53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507;  
 3       75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103;  
 4       80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301;  
 5       90-4-215; 90-6-331; 90-7-220; and 90-9-306.

6       (4) There is a statutory appropriation to pay the  
 7       principal, interest, premiums, and costs of issuing, paying,  
 8       and securing all bonds, notes, or other obligations, as due,  
 9       that have been authorized and issued pursuant to the laws of  
 10      Montana. Agencies that have entered into agreements  
 11      authorized by the laws of Montana to pay the state  
 12      treasurer, for deposit in accordance with 17-2-101 through  
 13      17-2-107, as determined by the state treasurer, an amount  
 14      sufficient to pay the principal and interest as due on the  
 15      bonds or notes have statutory appropriation authority for  
 16      the payments. (In subsection (3): pursuant to sec. 7, Ch.  
 17      567, L. 1991, the inclusion of 19-6-709 terminates upon  
 18      death of last recipient eligible for supplemental benefit;  
 19      and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
 20      22-3-811 terminates June 30, 1993.)"

21       **Section 9.** Section 50-5-103, MCA, is amended to read:

22       **"50-5-103. Rules and standards -- accreditation by**  
 23       **joint commission.** (1) The department shall promulgate and  
 24       adopt rules and minimum standards for implementation of  
 25       parts 1 through-4 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after and 2 upon adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of hospitals health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the for purposes of the licensing process. The department may, in addition to its inspection authority in [section 6], inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when such the complaints pertain to licensing requirements. Inspection by the department upon such a specific complaint made in writing pertaining to licensing requirements shall be is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written

evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards."

**Section 10.** Section 50-5-108, MCA, is amended to read:

"50-5-108. Injunction. ~~{1}~~ The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter;

~~{a}~~(1) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;

~~{b}~~(2) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or

~~{c}~~(3) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

~~{2}~~--A court may award the department PREVAILING PARTY costs, reasonable attorney fees, and expenses incurred in investigating, abating, or enjoining a violation of or

~~enforcing part 1 or 2 of this chapter or a rule, license  
provision, or order adopted or issued pursuant to part 1 or  
2.~~

~~{3} Costs, attorney fees, and expenses awarded to the  
department pursuant to this section must be deposited in the  
patient protection account provided for in {section 7}  
GENERAL FUND."~~

**Section 11.** Section 50-5-201, MCA, is amended to read:

"50-5-201. License requirements. (1) A facility or  
licensee who ~~contemplates~~ considering construction of or  
alteration or addition to a health care facility shall  
submit plans and specifications to the department for  
preliminary inspection and approval prior to commencing  
construction.

(2) No A person may ~~not~~ NOT operate a health care  
facility unless the facility is licensed by the department.  
Licenses may be issued for a period of 1 to 3 years in  
duration. A license is valid only for the person and  
premises for which it was issued. A license may not be sold,  
assigned, or transferred.

(3) Upon discontinuance of the operation or upon  
transfer of ownership of a facility, the license must be  
returned to the department.

(4) Licenses ~~shall~~ must be displayed in a conspicuous  
place near the admitting office of the facility."

**Section 12.** Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health  
care facility license -- provisional license. (1) The  
department may deny, suspend, or revoke a health care  
facility license if any of the following circumstances  
exist:

(a) The facility fails to meet the minimum standards  
pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified  
by lack of training or experience.

(c) The applicant or any person managing it has been  
convicted of a felony and denial of a license on that basis  
is consistent with 37-1-203 or the applicant otherwise shows  
evidence of character traits inimical to the health and  
safety of patients or residents.

(d) The applicant does not have the financial ability  
to operate the facility in accordance with law or rules or  
standards adopted by the department.

(e) There is cruelty or indifference affecting the  
welfare of the patients or residents.

(f) There is misappropriation of the property or funds  
of a patient or resident.

(g) There is conversion of the property of a patient or  
resident without ~~his~~ the patient's OR RESIDENT'S consent.

(h) Any provision of parts 1 through 3 is violated.

1 (2) The department may reduce a license to provisional  
2 status if as a result of an inspection it is determined  
3 minimum--standards--are--not--being--met that the facility has  
4 failed to comply with a provision of part 1 or 2 of this  
5 chapter or has failed to comply with a rule, license  
6 provision, or order adopted or issued pursuant to part 1 or  
7 2.

8 (3) The denial, suspension, or revocation of a health  
9 care facility license is not subject to the certificate of  
10 need requirements of part 3.

11 (4) The department may provide in its revocation order  
12 that the revocation will be in effect for up to 2 years. If  
13 this provision is appealed, it must be affirmed or reversed  
14 by the board OR COURT."

15 **NEW SECTION. Section 13. Repealer.** Sections 50-5-109,  
16 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are  
17 repealed.

18 **NEW SECTION. Section 14. Codification instruction.** (1)  
19 [Sections 1 through 6] are intended to be codified as an  
20 integral part of Title 50, chapter 5, part 1, and the  
21 provisions of Title 50, chapter 5, part 1, apply to  
22 [sections 1 through 6].

23 (2) [Section 7] is intended to be codified as an  
24 integral part of Title 50, chapter 5, part 2, and the  
25 provisions of Title 50, chapter 5, part 2, apply to [section

1 7].

-End-