Children, Families, Health, and Human Services Interim Committee

PO BOX 201706

69th Montana Legislature

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September 09, 2026

Director Charles Brereton
Department of Public Health and Human Services
111 North Sanders, Suite 301
Helena, Montana 59601

Dear Director Brereton:

Pursuant to 5-5-225, MCA, the Children, Families, Health, and Human Services Interim Committee (Committee) reviewed MAR Notice No. 2026-533.1, pertaining to Best Beginnings Child Care Scholarship. At its September 09, 2026, meeting, a majority of the members of the Committee objected to MAR Notice No. 2026-533.1.

This letter constitutes notice to the Department that the Committee files a formal objection, pursuant to 2-4-406(2), MCA to MAR Notice No. 2026-533.1. A copy of this notification is included in the Committee's records.

Under 2-4-406(2), MCA, the Committee may object to the proposed rulemaking if the Committee considers the proposed rulemaking to not have been proposed in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, MCA. The Committee objects to MAR Notice No. 2026-533.1 as outlined below.

The proposed rule is not in substantial compliance with 2-4-305(5), MCA, because the adopted rule is not within the scope of the authority conferred and not in accordance with standards prescribed by other provisions of law.

Under 2-4-305(5), MCA, for a rule to be effective, the rule "must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." The proposed amendment to 37.80.203 ARM provides that "A change in child care provider will be effective the first day of the month following the reported change." This language is not in accordance with standards prescribed by other provisions of law.

The Legislature provided for the Best Beginnings Child Care Scholarship Program in HB 648 (2023). As passed by the Legislature, 52-2-713, MCA, provides that Department pay "a rate established by the department and appropriated by the legislature based on a child's *authorized enrollment slot.*" During the legislative process on HB 648 (2023), language to set payments "at the child's monthly authorized amount" was struck and replaced with the enacted language to base payments "on a child's authorized enrollment slot". Importantly, this amendment struck "monthly" from the 52-2-713, MCA. The proposed rule amendment to 37.80.203 ARM that "a change in child care provider will be effective the first day of the month following the reported change" effectively puts this monthly language back and is not in accordance with the intention of the Legislature.

If a rule is objected to under 2-4-406(2), MCA, before the rule is adopted, as is the case here, the rule is not effective until the day after final adjournment of the regular session of the Legislature that begins after the notice proposing the rule was published by the Secretary of State unless the Committee withdraws its objection pursuant to 2-4-306(3)(c), MCA.

Please note that the Department is required to respond in writing to the Committee's objection within 14 days of the mailing of this objection pursuant to 2-4-406(3), MCA. After receipt of the response, the Committee may withdraw or modify its objection.

If the Committee fails to withdraw or substantially modify its objection, it may vote to send the objection to the Secretary of State for publication in the MAR and ARM. Under 2-4-406(5), MCA, if the objection is published, the Department would bear the burden, in any action challenging the legality of the rule objected to by the Committee of proving that the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, MCA.

Thank you for your attention to this matter.

Sincerely,

Representative Jodee Etchart
Presiding Officer
Children, Families, Health, and Human Services Interim Committee

cc: Jennifer Morgan, Chief Legal Counsel (acting), DPHHS
Kim Aiken, Principal Deputy Director, DPHHS
Heidi Sanders, Rule Reviewer, DPHHS
Kendra Fanning, Administrative Rules Specialist, DPHHS

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