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. 2026-48.1, pertaining to child and adolescent day treatment. At its September 09, 2026, meeting, a majority of the members of the Committee objected to MAR Notice No. 2026-48.1.

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. 2026-48.1. 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. 2026-48.1 as outlined below.

1. *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.*

Under 2-4-305(5), MCA, for a rule to be effective, the rule "must be within the scope of authority conferred." The Department is authorized to provide licensing requirements for mental health centers under 50-5-103 and 50-5-204, MCA. However, the proposed changes to ARM 37.106.1936 include overly prescriptive operational requirements that create substantial workforce and financial burdens and unnecessarily restrict the ability of child and adolescent day treatment programs to safely and sustainably provide services.

2. *The proposed rule is not in substantial compliance with 2-4-305(6)(b), MCA, because the statement of general necessity fails to articulate principal reasons and rationales for the intended actions.*

MAR 2026-48.1 is not in substantial compliance with 2-4-305, MCA. Under 2-4-305(6)(b), MCA, an agency's statement of general necessity for a proposed rulemaking must clearly articulate "the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules." A rulemaking proposal must provide a meaningful explanation for each of its proposed changes. Further, 2-4-305(6)(b), MCA, makes clear that it is not sufficient for the statement of reasonable necessity to merely explain what the rule does; the statement of reasonable necessity must address the rationale behind the department's proposal.

Here, the Department's proposed rulemaking amends subsection (5) to state, "[p]art-time therapists must be on-site for at least 20 hours per week, provide therapy, and be involved in the development of treatment plans, interventions, and treatment team meetings." Additionally, the proposed rulemaking caps part-time therapists to a caseload of six day-treatment clients.

Despite these substantial limitations placed on clinical staff from this rulemaking proposal, the Department's statement of reasonable necessity fails to provide *any* rationale for *why* part-time clinical staff must work for a minimum of 20 hours per week but may not have a caseload more than six clients.

The Department's statement of general necessity merely explains what the rule provides and makes vague statements as to the benefit of part-time workers for all patients broadly. The statement of general necessity does not articulate any clear reason for the minimum hours worked and maximum caseload limitations placed on part-time clinical staff and, by extension, health care facilities.

In summary, 2-4-305(6)(b), MCA, requires that the statement of "reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's proposed rulemaking." The Department's statement of reasonable necessity for MAR Notice No. 2026-48.1 fails to meet the standard required by 2-4-305(6)(b), MCA, to meaningfully "stat[e] the principal reasons and the rationale for its intended action."

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
Gregory Henderson, Rule Reviewer, DPHHS
Nicole Balcerzak, Paralegal, DPHHS

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