GREG GIANFORTE
GOVERNOR

DEPARTMENT OF
PUBLIC HEALTH &
HUMAN SERVICES

CHARLIE BRERETON
DIRECTOR

September 23, 2026

Sent via Email

Representative Jodee Etchart, Presiding Officer
Children, Families, Health, and Human Services Interim Committee
c/o Emily McKay, Attorney
Emily.McKay@legmt.gov

Re: Response to CFHHS Formal Objection to MAR. No. 2026-533.1

Dear Representative Etchart,

Pursuant to § 2-4-406(3), MCA, this letter serves as the response of the Department of Public Health and Human Services (the Department) to the Children, Families, Health, and Human Services Committee's (the Interim Committee) September 9, 2026[1] notice of formal objection to MAR Notice No. 2026-533.1 (Formal Objection Letter).

BACKGROUND AND INTRODUCTION

In 2023, the Early Childhood and Family Support Division (ECFSD) of the Department conducted a Market Rate Survey, studying the prices and fees that child care providers charge privately paying parents whose children are receiving child care in Montana. The results of the Market Rate Survey are, among other things, used to establish Best Beginnings Scholarship (BBS) reimbursement rates, payment practices, and BBS regulations.

The 2023 Survey found that most child care centers and home-based providers charge based on enrollment; that is, 71% of centers and 59% of home-based providers charge parents a month in advance, for the entire monthly slot, and typically at the beginning of each month. Parents pay and providers keep the entire monthly amount regardless of whether a child receiving care uses all of the allotted, paid-for child care hours in a particular month.

During the 68th Legislative session, House Bill 648, *inter alia*, amended § 52-2-713, and required the Department to pay a [BBS] rate "established by the department and

[1] The Formal Objection letter, dated September 9, 2026, was sent via email and U.S. Mail to the Department on September 10, 2026.

appropriated by the legislature based on a child's authorized enrollment slot…" (New language underlined.)

The Child Care and Development Fund (CCDF) is a federal and state partnership supported by the Administration for Children and Families' Office of Child Care. The Child Care and Development Block Grant Act (CCDBG) authorizes the CCDF, and the program has over $5 billion in federal funding. States, territories, and Tribes with funding administer the program, and they provide financial assistance to low-income families. The program lets families access child care to attend work, training, or educational programs.[2] States are required to comply with CCDF requirements as a condition of receiving these federal funds. CCDF regulations require Lead Agencies, such as the Department, to maintain compliance with all provisions of the CCDBG, regulations, and the State's approved CCDF Plan during the administration of their program.

In April of 2024, CCDF implemented new rules that, *inter alia*, required the Department to establish payment practices that delink, to the extent practicable, BBS provider payments from a child's occasional absence; that generally reflect accepted private-pay payment practices, and that pay based on part-time or full-time basis, rather than paying for hours of service or smaller increments of time.[3]

With MAR 2026-533.1, The Department proposed a payment model update to bring BBS business practices into alignment with the changed federal regulations and the 2023 amendments to § 52-2-713 required by HB 648.

RESPONSES TO INTERIM COMMITTEE OBJECTION

On September 9, 2026, the Interim Committee objected to MAR Notice No. 2026-533.1 stating,

> The proposed rule [37.80.203] is not in substantial compliance with 2-4-305(5), MCA, because the adopted rule[4] is not within the scope of authority conferred and not within the standards prescribed by other provisions of law.

Specifically, the formal objection alleges that a proposed amendment to ARM 37.80.203 (providing that "a change in child care provider will be effective the first day of the month following the reported change") is not in accordance with standards prescribed by other provisions of law.

In support of its objection, the Interim Committee refers to a past version of HB 648. Presumably the Interim Committee is referring to HB 648.1 which, in relevant part, originally proposed an amendment to § 52-2-713: "The department shall pay a rate based

[2] https://childcareta.acf.hhs.gov/fundamentals-ccdf-administration (accessed September 19, 2026).
[3] See 45 CFR 98.45(m).
[4] The objected-to change to ARM 37.80.203 is currently proposed and has not been adopted.

on the child's enrollment and set at the child's monthly authorized amount…"[5] (Emphasis added.) The Interim Committee alleges that the amendment proposed to ARM 37.80.203 in MAR No. 2026-533.1 pays a BBS rate based on a monthly authorized amount, effectively implementing the HB 648.1 language, the latter of which was ultimately rejected by the Legislature.

As a threshold issue, the Interim Committee has not specified how a provider change taking effect the month after it is reported is not in accordance with standards prescribed by other provisions of law. A conclusory statement that the proposed amendment to 37.80.203 "effectively puts [the HB 648.1] monthly language back" does not set forth how 37.80.203 is noncompliant with § 52-2-713, which is the legal standard pursuant to § 2-4-305(5).

§ 52-2-704(3)(c) authorizes the Department to administer the Best Beginnings Scholarship program. In doing so, the Department must implement required federal regulatory changes and state statutory changes, all while staying within the limitations of its rulemaking authority. The Department has faithfully done this. Specifically, the proposed rules delink provider payments from a child's absences (enrollment-based payments), therefore making payments to providers based on a child's authorized enrollment slot. Setting a rule where provider changes take effect on the first of the month is simply the administrative mechanism required to honor an authorized enrollment slot per HB 648. If a family could move mid-month and take the BBS funding with them, BBS providers would not be paid for a reserved "enrollment slot." Without this rule change, the result would be a continuation of an attendance-based fee-for-service model, which does not adhere to CCDF regulations nor § 53-20-713.

"In Montana each branch of government is equal, coordinate and independent, in that powers belonging to one branch may not be exercised by another." *MEA-MFT v. McCulloch*, ¶28, 366 Mont. 266, 291 P.3d 1075 (citing *Powder River County v. State*, 2002 MT 259, ¶ 112, 312 Mont. 198, 60 P.3d 357). Article III, section 1 of the Montana Constitution divides the government into legislative, executive, and judicial branches, and provides that "[n]o person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." Article V, section 1 of the Montana Constitution provides that the "legislative power is vested in a legislature consisting of a senate and a house of representatives." During an interim when the Legislature is not in session, the Children, Families, Health, and Human Services Committee is an interim committee of the Legislature. It is empowered to sit as a committee and may act in its respective area of responsibility. § 5-5-202(1), (2)(c). The Interim Committee has the statutory authority to review administrative rules within its jurisdiction. § 5-5-215(1)(a).

[5] https://docs.legmt.gov/download-ticket?ticketId=b1a6976b-dc5a-45f9-804b-2a10346cc509

However, Article VI, section 4 of the Montana Constitution provides that the "executive power is vested in the governor who shall see that the laws are faithfully executed." The Legislature made the Department responsible for planning, implementing, and administering the Best Beginnings Scholarship Program and for establishing a pay rate based on a child's authorized enrollment slot.[6]

The Department has undertaken this task in a manner that is consistent with its constitutional and statutory authority and that is within its limitations. For these reasons, the Department requests that the Interim Committee withdraw its objection and the Formal Objection Letter, pursuant to § 2-4-406(2).

Sincerely,



Charles T. Brereton (Sep 23, 2026 10:12:28 MDT)

Charles T. Brereton
Director

[6] §§ 52-2-704, -713.