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Children, Families, Health, and Human Services Interim Committee
66th Montana Legislature

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August 18, 2020

RE: Pending Poll re: MAR Notice No. 37-923 Canceled

On behalf of the Children, Families, Health, and Human Services Interim Committee (CFHHS), we write regarding the pending legislative poll concerning MAR Notice No. 37-923, pertaining to flavored electronic smoking devices. After CFHHS' meeting on August 12, 2020, and before mailing the poll materials to members of the Legislature, we received notice from the Department of Public Health and Human Services (Department) of its intent to withdraw the proposed rulemaking and to not adopt the proposed rulemaking. Today, the Department filed with the Secretary of State for publication in the Montana Administrative Register a Notice of Decision on the proposed rulemaking, in which the Department states: "The anticipated polling of the legislature has revealed that additional education and collaboration is necessary before moving forward on this issue. **Accordingly, the department withdraws MAR Notice No. 37-923 from consideration and will not be adopting the proposed rules.**" (Emphasis added.)

Because the proposed rulemaking has been withdrawn, the legislative poll concerning MAR Notice No. 37-923 is moot and would have no effect under 2-4-404, MCA, which provides that the results of a legislative poll are admissible in litigation involving the validity of **a proposed rule or adopted rule**. Therefore, CFHHS will not take further action regarding the legislative poll concerning MAR Notice No. 37-923 and directs staff to not proceed with mailing the poll materials to members of the Legislature.

Sincerely,

Representative Eric Moore
Chair of CFHHS

Senator Diane Sands
Vice Chair of CFHHS