

Proposal for Legislation – 2023 Legislative Session Eliminate Board of Public Assistance (BOPA)

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1. What is the problem or issue?

BOPA (or Board) has existed in some form since 1935, and under the current name since 1995. The Board previously oversaw the department of public welfare, which was the predecessor to DPHHS. Eventually the Board's only duty became assurance of hearing rights for public assistance programs. Through administrative rule, the Board's responsibility was then shifted to being an appeal body with the Department responsible for the initial hearing process. The Board has served in this function since about 1953.

The Board hears appeals primarily for SNAP, TANF, and Medicaid cases and consists of three Governor appointed members. Each year OAH opens about 2,300 cases that have appeal rights to BOPA. Hundreds of those cases end up being scheduled for a hearing, yet fewer than 20 of those cases get appealed to the Board annually. The overwhelming majority of OAH decisions are affirmed by the Board.

Such low BOPA appeal numbers speak to the efficiency and strength of DPHHS's current administrative review and hearing process which results in timely and fair decisions. However, despite such low utilization by the public the department is still required to maintain the rules, infrastructure, and processes in place to facilitate the Board's operations. OAH dedicates administrative staff time to facilitate communication with the Board, prepare administrative records for appeal, prepare meeting packets, take minutes, and provide whatever other support the Board requires. In addition, OLA must assign attorneys to represent the department during these appeals.

Finally, the BOPA process is an additional step that a program participant must fulfill before an action in court can be filed. As such, elimination of this step from the overall appeal process is in line with goals of the RRI where an administrative process can be streamlined to get the program participant a final decision faster without the need for filing more paperwork and having to go through yet another hearing.

2. What do you want the legislation to do?

Streamline the hearing process by eliminating an appeal step that needs to be exhausted prior to the claimant being able to bring an appeal in district court.

3. If possible, please list the MCA (Montana Code Annotated) sections that would need to be amended.

The following sections of the MCA will need to be repealed: 2-15-2203. This section established the board as a quasi-judicial board and allocated to DPHHS.

MCA 53-2-606 sets out the right to a hearing for decisions with respect to the department's various public assistance program. The statute dictates the board will provide the hearing. The statute will be amended to eliminate the reference to the Board and make it clear that the hearing rights will be provided by the department – which is in line with the current process with the Department is responsible for the initial hearings.

4. If the proposed change requires additional funding, what funding sources do you propose?

No additional funding is required.

5. Has similar legislation been requested in the past, been introduced in another state, or provided as a model act? If so, please provide a citation, reference, or point of contact.

No similar legislation has been proposed in the past in Montana. From a survey of resources available online (information put out by various HHS Departments and by reading the administrative rules of those states) the following are examples of states which do not have an interim appeal process following a final decision by a hearing officer and prior to a program participant being able to file an action in court: Alabama, Arkansas, Connecticut, Delaware, Hawaii, New York, Rhode Island, South Dakota, and Wyoming. This is not an exhaustive list as only about half of all the states were surveyed and information for some states was difficult to obtain.