



Children, Families, Health, and Human Services Interim Committee

68th Montana Legislature

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September 1, 2023

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Maddie Krezowski, Staff Attorney
RE: Overview of Informal Objections Between Interim Committee Meetings

This memo covers the process for the Children, Families, Health, and Human Services Interim Committee (committee) to lodge an informal objection to a proposed administrative rule between committee meetings.

Under the timeline in the Montana Administrative Procedure Act (MAPA) for the proposal and adoption of administrative rules, it is possible that the Department of Public Health and Human Services (DPHHS) could both propose and adopt a rule between meetings of the committee without the committee having an opportunity to discuss the proposed rulemaking at a meeting. An informal objection allows the committee to delay the adoption of a proposed rule until the committee's next meeting. The committee does not have to meet to lodge an informal objection.

Overview

The committee is required to review administrative rules promulgated by DPHHS for compliance with MAPA.¹ Under MAPA, a rule may not be adopted until at least 30 days after the publication of the proposal notice in the Montana Administrative Register (MAR).² The Secretary of State publishes the MAR twice a month on a regular schedule. Rulemaking is adopted on filing the adoption notice with the Secretary of State and effective on publication of the adoption notice in the MAR.³ An agency must submit notices for publication to the Secretary of State's office at least 10 days before the notice is published in the MAR.⁴

Given this timeline for publication and adoption, it is possible that DPHHS could both propose and adopt a rule between meetings of the committee. MAPA allows the committee to informally object to a proposed rule, which prevents the agency from adopting the rule before the next interim committee meeting.⁵ The committee may not informally object to a rule after it has

¹ § 5-5-225

² § 2-4-302(2)(d)

³ § 2-4-306

⁴ ARM 1.2.419

⁵ § 2-4-305(9)

been adopted. The informal objection allows the committee to consider the rule at its next meeting. At the next meeting, the committee may choose to renew its objection. If the committee continues to renew its objection at each meeting, it may delay the adoption of the proposed rule until the publication of the last issue of the MAR published within the six-month window after the publication of the proposal notice.⁶

Process

The committee does not have to hold a meeting to vote to lodge an informal objection. The committee may lodge an informal objection if a majority of the committee members notify the presiding officer in writing that they object to a proposed rule or a portion of the proposed rule.⁶ The requirement to notify the presiding officer can be accomplished through an e-mail sent to the presiding officer. **Please include committee staff on the e-mail to the presiding officer requesting an informal objection.**

If a majority of the committee members notify the presiding officer that they object to the proposed rule, committee staff notifies the agency of the objection in writing (the committee is not required to set forth its reasons for the objection) and that the committee intends to address the objection at the next meeting of the committee.

Important Dates for the Committee to Consider

For each issue of the MAR there are two important dates to consider. The first date is the filing deadline for the agency to submit notices to the Secretary of State's office and provide notice to the committee.⁷ This date is 10 days before the publication date. The second date is the publication date. This is the date the notice is published in the MAR. A rule is proposed after it is published in the MAR. The committee can informally object to a proposed administrative rule after this publication date.

The committee meets every other month. Between the September 12 and the November 15 meetings of the committee, four issues of the MAR will be published and an additional issue will have a filing deadline as follows:

Filing Deadline	Publication Date
September 12	September 22
September 26	October 6
October 10	October 20
October 24	November 3
November 7	November 17

Note that it is possible that a rule proposal published on September 22 or October 6 could be adopted before the committee's meeting on November 15. Rules proposed in the October 20 issue or later cannot be adopted before the November 15 committee meeting because rules may not be adopted until at least 30 days after their initial publication in the MAR.

⁶ § 2-4-305(9)

⁷ See ARM 1.2.419 and § 2-4-305(9)