GREG GIANFORTE
GOVERNOR

DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

MONTANA DPHHS

CHARLIE BRERETON
DIRECTOR

2025 Proposed Legislation Concepts

Title: 6901-04-012 Eliminate Board of Public Assistance
Agency Name - Division: DPHHS/Office of Administrative Hearings
Agency Contact/Phone: Ford Hayes/(406) 444-4259
Date: September 1, 2024

1. **What is the purpose of the proposed legislation?**
   Streamline the DPHHS administrative hearing process by eliminating a rarely used Board of Public Assistance (BOPA) appeal step that must be taken prior to a claimant being able to bring an appeal in district court.

2. **What is the background?**
   BOPA (or Board) has existed in some form since 1935 and under its 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 through its existing Office of Administrative Hearings (OAH).

   The Board hears appeals primarily for SNAP, TANF, and Medicaid cases and consists of three Governor-appointed members. Each year OAH opens approximately 2,300 cases that have appeal rights to BOPA. Hundreds of those cases are scheduled for a hearing and resolved, with fewer than 20 of cases being 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 through OAH. The existing OAH process ultimately 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, prepares administrative records for appeal, prepares meeting packets, takes minutes, and provides

other support required by the Board. In addition, OLA must assign attorneys to represent the Department during Board appeals.

Finally, the Board appeals process is an additional step that a program participant must take before an action can be filed in court. As such, elimination of this step from the overall appeals process aligns with the goals of cutting red tape. Without the Board, a program participant will likely be able to receive a final decision faster and without the need for more paperwork and hearings.

3. **If possible, please list the MCA (Montana Code Annotated) sections that would need to be amended.**
   The following sections of MCA will need to be repealed: 2-15-2203. This section established the Board as a quasi-judicial body and allocated funds to DPHHS.

   MCA 53-2-606 establishes the right to a hearing for decisions with respect to the Department's various public assistance programs. 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. This is in line with the current process where the Department is responsible for conducting the initial, independent hearings through OAH.

4. **Please list anticipated fiscal impact by fund type.** *(Dollar amounts, funding source, and FTE if known)*
   No additional funding is required.

5. **Please list anticipated controversy or impact on other state agencies or special interest groups.** N/A

6. **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.**

   Similar legislation was proposed in the 2023 Legislative Session through Senate Bill 87. States that do not have an interim appeals process following a final decision by a hearing officer and prior to a program participant being able to file an action in court include:
   - Alabama
   - Arkansas
   - Connecticut

- Delaware
- Hawaii
- New York
- Rhode Island
- South Dakota
- Wyoming