

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

MEMORANDUM FROM THE COMMISSIONER

TO: MONTANA HEALTH INSURANCE CARRIERS

FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

DATE: November 25, 2013

Many of you have asked me how I will respond to the President's announcement last week regarding the renewal of 2013 health plans. The Montana legislature did not adopt the minimum requirements of the Patient Protection and Affordable Care Act (ACA) into state law. As a result, I must rely on the federal government for enforcement support and for interpretation of ACA provisions.

Therefore, in Montana, the decision to renew 2013 health plans, pursuant to the President's offer, is effectively left up to the health insurers. Insurers who intend to allow renewal of policies need to inform this office of their decision in writing by December 2, 2013. Please also provide in writing the details regarding how you intend to implement that decision. Should you decide to move forward with renewal of 2013 products, the Commissioner of Securities & Insurance (CSI) will provide additional guidance on details and timing of the process.

Montana law will require the following:

If an insurer chooses to renew their existing block of 2013 individual or small employer group products, they must make the renewal offer to all policyholders. Otherwise, violations of guaranteed renewability and/or other discrimination violations may occur. Insurers may not "pick and choose" who will receive a renewal offer.

All rates and form changes for 2013 products that will renew January 1 or later must be filed for review by this office. Form modifications will be necessary to incorporate changes in the law that remain in effect, such as mental health parity. Rate increases may not be implemented until the rate review process is complete and the legally required notice of rate increases and benefit modification has been given. This process may take as long as four months. In the interim, insurers must extend existing rates.

Previous guidance from Centers for Medicare & Medicaid Services (CMS) makes it clear that health insurers may not renew products unless they have a 2014 ACA compliant product and rates approved and available for sale.

The new network adequacy requirements of Montana Code Annotated (MCA) 33-22-1706 will be applied to 2013 products renewed in 2014.

The president's announcement requires that 2013 renewal offers be accompanied by a notice of availability of premium tax credits and an explanation of benefits that are missing from the 2013 plans. Those notices must be submitted to this office for review.

Potential state legal issues include:

Insurers should also be aware if they choose to segregate their risk pools in this manner that CSI has some concerns about state legal issues that may arise in the future.

First, the MCA 33-18-206 prohibits "unfair discrimination between individuals of the same class and essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable there under or in any of the terms or conditions of such contract in any manner whatever." Small employer group insurers are also subject to nondiscrimination based on health status as described in MCA 33-22-526.

The CSI cannot predict the consequences of a decision by an insurer to maintain different risk pools for a specific subset of renewal business or how those consequences will impact compliance with Montana laws prohibiting discrimination.

The CSI is especially concerned about the potential for discriminatory impact on employees. The employer will be making the decision concerning whether to continue in a 2013 plan, not the individual employees. Those employees may be adversely impacted by pre-existing condition exclusions, an inadequate benefit package or higher cost sharing than similarly situated employees in a different employer group with a 2014 ACA compliant health plan.

Second, unfair competition, which is prohibited under MCA 33-18-103 and 33-18-1003, may occur, depending on how health insurers in Montana respond to the President's offer. Insurers that have the largest blocks of individual or small employer group business clearly have an opportunity to adversely impact other health insurers who have small blocks of business or who are new to the market. The insurers with a larger market share in 2013 may be able to reduce or discourage competition in the Montana market by offering the renewal of cheaper, less comprehensive health plans, thereby removing the better "previously insured" risks from the exchange and the community rated risk pools of less established insurers.

Once again, please provide this office with your decision in writing by December 2, 2013 and be sure to include the details regarding how you intend to implement that decision. As you contemplate your final decision, I would ask that you keep in mind what is best for Montana consumers and the stability of our state's health insurance marketplace. I look forward to receiving your response and wish you and your family a Happy Thanksgiving holiday.