

No. 10-36001

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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DALE FOSSEN, et al,

Plaintiffs-Appellants,

v.

BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.,

Defendant - Appellee.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

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BRIEF OF *AMICUS CURIAE*  
MONICA J. LINDEEN, COMMISSIONER OF SECURITIES AND  
INSURANCE, MONTANA STATE AUDITOR  
IN SUPPORT OF APPELLANT, URGING REVERSAL

---

OFFICE OF THE COMMISSIONER  
OF SECURITIES AND INSURANCE,  
MONTANA STATE AUDITOR  
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840 Helena Avenue  
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Attorneys for *Amicus Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

IDENTITY AND INTEREST OF AMICUS CURIAE ..... 1

STATEMENT PURSUANT TO RULE 29(c)(5) ..... 2

STATEMENT OF THE CASE AND STATEMENT OF FACTS..... 2

INTRODUCTION ..... 4

ARGUMENT..... 5

CONCLUSION .....12

CERTIFICATE OF COMPLIANCE WITH RULE 32(A).....13

**TABLE OF AUTHORITIES**

**Cases**

*Fossen v. Blue Cross*, \_\_\_F. Supp. 2d\_\_\_, 2010 WL 3947282, at \*5 (D. Mont. 2010) .....8, 11

**Statutes**

15 U.S.C. § 1011, *et seq.* (2006) ..... 1  
29 U.S.C. § 1001, *et seq.* (2006) ..... 1, 3, 4, 5, 6, 7, 8  
29 U.S.C. § 1144(b)(2)(A) (2006)..... 1  
29 U.S.C. § 1182(b) (2006)..... 5  
29 U.S.C. § 1182(b)(1) (2006) ..... 4  
29 U.S.C. § 1191(a) (2006)..... 3  
29 U.S.C. 1002(5) (2006)..... 7  
42 U.S.C. § 300gg—91(e)(4) (2006)..... 6  
Mont. Code Ann. § 2-15-1902 (2009) ..... 1  
Mont. Code Ann. § 2-15-1903 (2009) ..... 1  
Mont. Code Ann. § 33-1-301 (2009) ..... 1  
Mont. Code Ann. § 33-22-1803(20) (2009) .....6, 9, 11  
Mont. Code Ann. § 33-22-1803(7) (2009) .....10  
Mont. Code Ann. § 33-22-1809 (2009) .....5, 9  
Mont. Code Ann. § 33-22-526 (2009) ..... 3, 4, 5, 9, 11, 12  
Mont. Code Ann. Title 33, Chapter 22, part 18 .....5, 6  
Pub. L. 104-191; 110 Stat. 1936 (1996) .....3, 4, 5, 6, 11

**Rules**

Fed. R. App. P. Rule 29(c)(5) ..... 2

**Regulations**

45 C.F.R. 144.103 (2009) .....10

**Montana Constitutional Provisions**

Article VI, Sections 2 and 4 ..... 1

## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The Montana State Auditor is the ex officio Commissioner of Securities and Insurance (“Commissioner”). She is a state-wide elected official pursuant to the Montana Constitution, Article VI, Sections 2 and 4, and serves as the Commissioner of Insurance pursuant to Mont. Code Ann. § 2-15-1903 (2009). The Montana Insurance Department is under the control and supervision of the Commissioner of Insurance pursuant to Mont. Code Ann. §§ 2-15-1902 (2009) and 33-1-301 (2009).

Pursuant to Mont. Code Ann. 33-1-301, the Commissioner for the state of Montana regulates insurers that do business in the state of Montana and is charged with enforcing the insurance codes, including the statutes at issue in this case. Blue Cross Blue Shield of Montana (“BCBSMT”), the defendant in this case, is a Montana domestic insurer. In the McCarran-Ferguson Act of 1945, 15 U.S.C. § 1011, *et seq.* (2006), Congress gave the various states the power to regulate the business of insurance within their respective jurisdictions. The authority to regulate insurance issued in connection with employee welfare benefit plans is reserved to the states through the savings clause of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (2006) (“ERISA”). 29 U.S.C. § 1144(b)(2)(A) (2006).

The Commissioner supports the brief of the Plaintiffs-Appellants and seeks to aid the Court of Appeals by offering the legal perspective of the insurance regulator for Montana.

**STATEMENT PURSUANT TO RULE 29(c)(5)**

Pursuant to Fed. R. App. P. Rule 29(c)(5), *amicus* states:

- A. This brief was not authored in whole or in part by a party’s counsel.
- B. No party or party’s counsel contributed money that was intended to fund preparing or submitting the brief.
- C. No person, other than the *amicus curiae*, contributed money that was intended to fund preparing or submitting the brief.

**STATEMENT OF THE CASE AND STATEMENT OF FACTS**

The Commissioner agrees with and incorporates by reference the Statement of the Case and Statement of Facts of Plaintiffs-Appellants Dale Fossen; D. and M. Fossen, Inc.; Larry Fossen; L. and C. Fossen, Marlowe Fossen; M. and C. Fossen, Inc.; and Fossen Brothers Farms, a Partnership (collectively referred to as “Plaintiffs”).

This *amicus* brief focuses on the preemption issue and supports the Plaintiffs’ position that the Montana statutes that regulate health insurance rates,

including Mont. Code Ann. § 33-22-526 (2009), are not preempted under ERISA. The Commissioner agrees with the arguments presented to support the Plaintiffs' position that the motion to remand should have been granted, as complete preemption does not apply because plaintiffs' claims could not have been brought under ERISA's civil enforcement scheme; the District Court erred in concluding that the Plaintiffs' state law claims were preempted based solely on the similarity of Montana law and ERISA; the Montana statute regulates insurance and should be saved from federal preemption under ERISA's Savings Clause; and furthermore, the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191; 110 Stat. 1936 (1996) ("HIPAA") allows state law to be broader than the minimum requirements of federal law, as long as it does not interfere with the operation of federal law. 29 U.S.C. § 1191(a) (2006). The Commissioner concurs with the legal analysis that was ably presented by the Plaintiffs and the National Association of Insurance Commissioners ("NAIC") and will not restate those arguments in her brief. The Commissioner also urges this court to find that the District Court erred in granting summary judgment to BCBSMT because Montana law should have been considered and it was not.

## **INTRODUCTION**

This *amicus* brief will focus on how the Montana regulatory scheme incorporates the minimum requirements of HIPAA but still remains unique “state law” and why the enforcement of Mont. Code Ann. § 33-22-526 is not “identical” to 29 U.S.C. § 1182(b)(1) (2006), even though the wording of both statutes is similar. Enforcement of particular regulations must rely on the definitions that surround that regulation and must take into consideration the other statutes that interact with it. The use of substantially different state and federal definitions affects the interpretation of Mont. Code Ann. § 33-22-526 and the outcome in this case. As explained below, the Montana definition of small employer is substantially different than the federal definition of employer relied on by the District Court. The small employer definition affects the interpretation of the Montana’s definition of bona fide association and its impact on Montana’s health insurance premium rating laws. The application of Montana law should not be preempted by the federal court just because one statute among many in the state regulatory scheme is similar to HIPAA and ERISA statutory provisions.

## ARGUMENT

**The Montana statute is not preempted by ERISA and it does not duplicate ERISA. State HIPAA laws can interact with other state laws and be enforced more broadly.**

Montana's regulatory scheme regarding premium rates for health insurance issued in connection with an employee welfare benefit plan is broader than ERISA's. Montana has specific rating laws that apply to small employer groups. Montana Code Annotated § 33-22-1809 (2009) establishes "rate band" limitations on insurers setting premium rates for small employer groups and also limits increases at renewal to a certain percentage. HIPAA and ERISA [prior to March 23, 2010] did not have specific laws that apply to health insurance premium rates for small employer groups. The only federal law that relates to premium rates for health insurance issued to employer groups is the statute at issue here, 29 U.S.C. § 1182(b) (2006). Montana established nondiscrimination on the basis of health status for small employer groups in 1993 when it adopted the "Small Employer Health Insurance Availability Act" [Mont. Code Ann. Title 33, Chapter 22, part 18 (2009)]. In 1997 Montana expanded that protection to large employers in order to meet the minimum standards contained in HIPAA and ERISA by adopting Mont. Code Ann. § 33-22-526.

When HIPAA was enacted in 1996, each state was charged with the responsibility of enforcing the minimum requirements of the new federal law, or risk losing some of its authority to regulate health insurance. Therefore, the Montana Legislature, like most states, passed a group of statutes that met the minimum requirements imposed by the federal HIPAA law, and those state statutes were substantially similar to the language in HIPAA and ERISA. That action was taken to preserve the state regulation of insurance, not to create an ERISA preemption opportunity. The HIPAA statutes were layered on top of the existing regulatory scheme in Montana. Only state statutes that “fell below the federal floor” established by HIPAA were repealed. Therefore, Montana’s “Small Employer Health Insurance Availability Act” [Mont. Code Ann. Title 33, Chapter 22, part 18], was amended as necessary, but left largely intact.

Because of the size of its group (2 to 50), the Fossen Brothers are a “small employer group” under both the Montana and the federal definition. Mont. Code Ann. 33-22-1803(20) (2009), and 42 U.S.C. § 300gg—91(e)(4) (2006). However, the Montana definition of small employer group is substantially different than the federal definition of employer relied on by the District Court, primarily because of the way bona fide associations are treated. The crux of the issue here is whether or

not Fossen Brothers remained a separate small employer or became a member of one large group after it chose to purchase health insurance through an association.

The District Court held that Associated Merchandisers Inc. (“AMI”), which was later incorporated into the Montana Chamber of Commerce Trust (“MCCT”), are not employers and cannot be considered the plan sponsor for ERISA purposes. The District Court relied on federal case law and opinions issued by the United States Department of Labor (“USDOL”) interpreting the federal ERISA definition of employer. Of course, the USDOL did not consider the Montana regulatory scheme when it issued those opinions, but instead relied on the federal ERISA definitions.

The federal ERISA definition of employer provides as follows: “any person acting directly as an employer; or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or **association of employers** acting for an employer in such capacity.” (*Emphasis added.*) 29 U.S.C. 1002(5) (2006). The USDOL and the District Court interpreted the reference to “association of employers” to mean “bona fide association” and further determined that “an unrelated group of employers” (even employers in the same line of business) that merely executes similar documents to purchase insurance together is

not an ERISA employer.” *Fossen v. Blue Cross*, \_\_\_F. Supp. 2d\_\_\_, 2010 WL 3947282, at \*5 (D. Mont. 2010). The District Court in *Fossen* held that “...it is possible under ERISA for a multiple employer welfare arrangement (a ‘MEWA’) to function as if it were a single employer providing a group health insurance plan. In order for such an association of employers to meet ERISA’s definition of an employer under section 1002(5), however, the association must be a ‘bona fide association’ of employers wherein the employer members have control of the association.” *Fossen*. The District Court concluded that:

Thus, neither the AMI arrangement nor the MCCT Arrangement can be a bona fide ‘association of employers acting for an employer’ in relation to an employee benefit plan within the meaning of section 1002(5). The Arrangements are purchasing consortiums, but the actual group health insurance plans exist at the participating employer level. If there are 600 employers in the MCCT, for example, then there are 600 employee benefit plans, not one plan. *Fossen*.

However, the plain language of the Montana definition of small employer appears to state the opposite and, therefore, is substantially different than the federal definition. It provides as follows:

“Small employer” means a person, firm, corporation, partnership, **or bona fide association** that is actively engaged in business that, with respect to a calendar year and a plan year, employed at least two but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. [...] In determining the number of eligible employees, companies are considered **one employer** if they:

- (a) Are affiliated companies;
- (b) Are eligible to file a combined tax return for purposes of state taxation; or
- (c) **Are members of a bona fide association.** (*Emphasis added.*)

Mont. Code Ann. § 33-22-1803(20).

The Montana definition creates a regulatory scheme that may lead to the conclusion that a bona fide association is actually one employer. If the Montana law means that the plan sponsor is the bona fide association, and that the association is a single large employer, BCBSMT rating practices may violate Mont. Code Ann. § 33-22-526. A Montana court did not have the opportunity to rule on this issue because the Plaintiffs' motion to remand was denied. If a Montana court rules the opposite and finds that MCCT is not a bona fide association, it may also conclude that other Montana laws will apply, such as the small employer group rating bands in Mont. Code Ann. § 33-22-1809.<sup>1</sup>

Another definition that is critical to the resolution of this case is the definition of the bona fide association. The federal definition provides as follows:

Bona fide association means, with respect to health insurance coverage offered in a state, an association that meets the following conditions:

---

<sup>1</sup>The Commissioner is not opining what the substantive outcome of this debate should be; rather, she is asserting that a Montana court should make this decision in light of all applicable Montana law.

- (1) Has been actively in existence for at least 5 years.
- (2) Has been formed and maintained in good faith for purposes other than obtaining insurance.
- (3) Does not condition membership in the association on any health status related factor relating to an individual (including an employee of any employer or a dependent of any employee).
- (4) Makes health insurance coverage offered through the association available to all members regardless of any health status related factor relating to the members (or individuals eligible for coverage through a member).
- (5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.
- (6) Meets any additional requirements that may be imposed under State law.

45 C.F.R. 144.103 (2009)

*[See also the Montana definition of bona fide association at Mont. Code Ann. § 33-22-1803(7) (2009).]*

Even though the federal and Montana definitions of bona fide association are virtually identical, the interpretation of the Montana law lends itself to a different conclusion than the one reached by the USDOL and the District Court because of Montana's unique definition of small employer. In fact, the opposite interpretation has resulted. For example, BCBSMT, with support from an affidavit from the director of the MCCT, asserts the position in this case that was ultimately adopted by the Federal District Court: that the AMI and the MCCT are not bona fide associations, but rather are a purchasing consortium of separate small employer groups. *[See Defendant's Brief in Support of Summary Judgment.]*

Despite its assertions in the Dale Fossen case, BCBSMT is actually setting its premium rates according to its interpretation of Montana law, not federal law. Relying on the Montana definition of small employer group and the representation that the MCCT is a bona fide association, BCBSMT asserts to the Commissioner that Montana small employer group law does not apply to the MCCT group health plan because it is considered “one employer” under Montana law at Mont. Code Ann. § 33-22-1803(20), and therefore is one large group. It maintains that, because MCCT has in excess of 11,000 members, MCCT is considered a large employer under Montana laws pertaining to group health insurance rating. Furthermore, BCBSMT asserts that Montana’s small employer group rating law, (which prescribes that rates stay within a 25 % band and that rates increases are restricted), does not apply to the MCCT group health plan because it is considered a “large group.” [See Exhibit A]. In addition, BCBSMT and the MCCT director declare that the MCCT is a bona fide association for the purpose of allowing its members to claim premium incentive and assistance payments for its members through the Insure Montana program. [See Exhibit B].

After its adoption in 1997 as part of the minimum requirements of HIPAA, Mont. Code Ann. § 33-22-526, became part of Montana’s regulatory scheme for rating fully insured employer group health plans. It does not exist in a vacuum, but

rather must be interpreted in the context of other Montana rating laws and applicable Montana definitions. Therefore, a Montana state court must address the meaning of Mont. Code Ann. § 33-22-526 in conjunction with all the other related Montana statutes and administrative rules.

### **CONCLUSION**

The District Court erred in denying the Plaintiffs' motion to remand this case to state court and also erred in granting summary judgment to the defendants because Montana law was not considered. This matter should be remanded back to state court for a resolution of state law issues. The Commissioner supports the brief of the Plaintiffs and the NAIC and respectfully requests that this Court overturn the District Court decision.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of March, 2011.

MONICA J. LINDEEN  
Commissioner of Securities and Insurance  
Montana State Auditor  
*Amicus Curiae*

By: s/ Christina Lechner Goe

**CERTIFICATE OF COMPLIANCE WITH RULE 32(A)**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because the brief contains 2,942 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32 (a)(6), because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point font. The brief has been scanned and is virus free.

By: s/ Christina Lechner Goe



**MONTANA STATE AUDITOR**  
**JOHN MORRISON**

COMMISSIONER OF INSURANCE  
 COMMISSIONER OF SECURITIES

February 2, 2007

James A. Vanvig, AVP  
 Actuarial and Reporting  
 Blue Cross Blue Shield of Montana  
 560 N. Park Ave.  
 P.O. Box 4309  
 Helena, MT 59604

RE: Small employer health insurance annual actuarial certification  
 Additional Actuarial Opinion Certification statement required for  
 Small Employer Group Bona fide Association Health Plans

Dear Mr. Vanvig,

The actuarial certification required by 33-22-1809(5)(b), MCA, for small employer health insurance plans insured by Blue Cross Blue Shield of Montana is due on March 15, 2007. Please be advised that Blue Cross Blue Shield of Montana must include in the actuarial opinion summary, a separate statement that verifies compliance with 33-22-1809, MCA for each small employer group bona fide association health plan that Blue Cross Blue Shield of Montana issues. The Department will not consider the certification to be complete unless the compliance of each association health plan is certified separately. If Blue Cross Blue Shield of Montana does not underwrite health plans for bona fide small employer group associations, please indicate that specifically.

If you have any questions, please write, call me at (406) 444-3848, or send a fax to (406) 444-3497 or an e-mail to [mmiksch@mt.gov](mailto:mmiksch@mt.gov).

Sincerely,

*Margaret A. Miksch*

Margaret A. Miksch, ASA, MAAA  
 Life and Health Insurance Actuary  
 Montana Insurance Department

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# BlueCross BlueShield of Montana

An Independent Licensee of the Blue Cross and Blue Shield Association

560 N. Park Avenue  
P.O. Box 4309  
Helena, Montana 59604  
(406) 444-8200

Customer Information Line:  
1-800-447-7828

Website:  
www.bluecrossmontana.com

March 12, 2007

John Morrison  
Montana State Auditor  
Department of Insurance  
PO Box 4009  
Helena MT 59604

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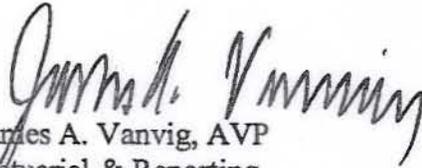
Dear Mr. Morrison:

Enclosed is the Small Employer Health Benefit Plans Certification for 2006.

BlueCross BlueShield of Montana provided health insurance coverage for 19 bona fide associations during 2006. None were small employer associations, however, as all had at least 50 employees in total (see MCA 33-22-1803 (20) (c)). Therefore BlueCross BlueShield of Montana did not provide coverage to bona fide small employer group associations in 2006.

If you have any questions concerning this document, don't hesitate to contact me at 444-8399.

Sincerely,

  
James A. Vanvig, AVP  
Actuarial & Reporting  
Blue Cross Blue Shield of Montana

JAV:nwn

Enclosures (1)



MONTANA STATE AUDITOR  
**JOHN MORRISON**

COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

840 Helena Ave. • Helena, MT 59601 • 800-332-6148

**INSURED ASSOCIATION PLAN APPLICATION**  
Montana Small Business Health Care Affordability Act

Please complete and return to: Montana State Auditor's Office  
840 Helena Avenue  
Helena, MT 59601  
Fax: 406-444-3497

**Please note that in addition to completing this application form, you must also include the following attachments:**

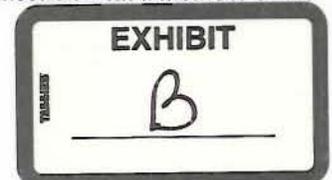
- The Association health plan's outline of coverage as required by 33-22-521, MCA, including but not limited to the following information: plan deductible(s), coinsurance(s), co-payments, member out of pocket maximum(s), up-front preventative benefits offered, lifetime maximum(s) of the policy, prescription drug coverage(s), dental coverage(s), vision coverage(s), and policy exclusions. If the insureds are offered a choice of cost-sharing options, please show all options available, as well as the percentage of insureds that choose those options.
- Schedule of rates, including the number of age-bands and health tiers used, as well as base rate(s) for the plan(s) and network(s) of coverage.
- Copies of policies and certificates offered.
- Health insurance application form as well as any follow-up materials, including health status questionnaires, associated with this form.
- Association or Organization mission statement and/or list of services and benefits aside from health insurance available to members.

**Demographic Information (must be complete)**

Association Name <b>ASSOCIATED MERCHANTISERS INC.</b>			
Contact Name and Title <b>BRUCE DUNNING</b>			
Address <b>94 W. NORTHERN PACIFIC</b>	City <b>BELGRADE</b>	State <b>MT</b>	Zip Code <b>59714</b>
Mailing Address if Different <b>P.O. BOX 29</b>	City <b>BELGRADE</b>	State <b>MT</b>	Zip Code <b>59714</b>
Telephone <b>(406) 388-7570</b>	Fax <b>(406) 388-7571</b>	Email Address	State Tax ID
Please List Any Additional Company Names <b>FURNITURE LEADERS</b>			

**Please answer the following questions.**

1. Who is the insurer(s) of the Association Health Plan? BLUE CROSS BLUE SHIELD of MONTANA
2. Is the Association Health Plan fully insured? YES
3. Have your insurance policies been approved by the Department of Insurance as employer-sponsored group health plans? Please submit proof of form approval, or a policy form number for verification purposes? Yes, all plans are currently filed and approved BCMSMT policies.
4. Is the Association a Bona Fide Association as defined in MCA 33-22-1803? Yes
  - (a) Has been actively in existence for at least 5 years;
  - (b) Was formed and has been maintained in good faith for purposes other than obtaining insurance;
  - (c) Does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;
  - (d) Makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and
  - (e) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.



5. Is the Association a Non-Bona Fide Association as defined in ARM 6.6.5060? \_\_\_\_\_;  
A "non-bona fide association" means an association which meets the requirements listed in 33-22-1803(7), MCA, except:  
(a) The association must have been actively in existence for at least 2 years

Approximately how long until the Association becomes Bona Fide?  
\_\_\_\_\_

6. What are the employer contribution requirements for the plan(s)? 60 % of the employee premium

7. What are the employee participation requirements of the plan(s)?

For employees who waive coverage and sign a waiver stating they have other coverage, are not counted for participation purposes. Participating requirements are as follows: 2-10 EE all; 2-10 EE's - all less 1;

8. Within the Association policy, are the employers or employees offered a choice of plans? If so, please describe.  
There are benefit options an employer can choose from. Regarding choice, the employees must enroll on the benefit option that the employer selects for the group.

9. Do rates within an individual small group vary based on the age of the participants? Yes

10. Are you in compliance with Montana Code Annotated 33-22-1809? Yes - this is held at BCBSMT

Please attach a copy of your last actuarial certification as required by 33-22-1809(5)



**MONTANA STATE AUDITOR  
JOHN MORRISON**

COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

840 Helena Ave. ♦ Helena, MT 59601 ♦ 800-332-6148

**INSURED ASSOCIATION PLAN APPLICATION**  
Montana Small Business Health Care Affordability Act

Please complete and return to: **Montana State Auditor's Office**  
840 Helena Avenue  
Helena, MT 59601  
Fax: 406-444-3497

**Please note that in addition to completing this application form, you must also include the following attachments:**

- The Association health plan's outline of coverage as required by 33-22-521, MCA, including but not limited to the following information: plan deductible(s), coinsurance(s), co-payments, member out of pocket maximum(s), up-front preventative benefits offered, lifetime maximum(s) of the policy, prescription drug coverage(s), dental coverage(s), vision coverage(s), and policy exclusions. If the insureds are offered a choice of cost-sharing options, please show all options available, as well as the percentage of insureds that choose those options.
- Schedule of rates, including the number of age-bands and health tiers used, as well as base rate(s) for the plan(s) and network(s) of coverage.
- Copies of policies and certificates offered.
- Health insurance application form as well as any follow-up materials, including health status questionnaires, associated with this form.
- Association or Organization mission statement and/or list of services and benefits aside from health insurance available to members.

Demographic Information (must be complete)				
Association Name <u>MONTANA CHAMBER OF COMMERCE</u>				
Contact Name and Title <u>WEBB BROWN, PRESIDENT / CEO</u>				
Address		City	State	Zip Code
<u>2030 ELEVENTH AVE STE 21</u>		<u>HELENA</u>	<u>MT</u>	<u>59601</u>
Mailing Address if Different		City	State	Zip Code
<u>PO BOX 1730</u>				<u>59624-1730</u>
Telephone	Fax	Email Address	State Tax ID	
<u>406-442-2405</u>	<u>406-442-2409</u>	<u>webb@montanachamber.com</u>		
Please List Any Additional Company Names <u>4020367002</u>				

**Please answer the following questions.**

1. Who is the insurer(s) of the Association Health Plan? BLUE CROSS & BLUE SHIELD OF MT
2. Is the Association Health Plan fully insured? YES
3. Have your insurance policies been approved by the Department of Insurance as employer-sponsored group health plans? Please submit proof of form approval, or a policy form number for verification purposes? YES  
SEE ATTACHED
4. Is the Association a Bona Fide Association as defined in MCA 33-22-1803? YES
  - (a) Has been actively in existence for at least 5 years;
  - (b) Was formed and has been maintained in good faith for purposes other than obtaining insurance;
  - (c) Does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;
  - (d) Makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and
  - (e) Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

5. Is the Association a Non-Bona Fide Association as defined in ARM 6.6.5060? No;  
A "non-bona fide association" means an association which meets the requirements listed in 33-22-1803(7), MCA, except:  
(a) The association must have been actively in existence for at least 2 years

Approximately how long until the Association becomes Bona Fide?  
\_\_\_\_\_

6. What are the employer contribution requirements for the plan(s)? AT LEAST 50% OF EMPLOYEE PREMIUM

7. What are the employee participation requirements of the plan(s)? NOT LESS THAN 20 HOURS/WEEK OR FULL TIME PER COMPANY POLICY

8. Within the Association policy, are the employers or employees offered a choice of plans? If so, please describe.

YES. MEDICAL, DENTAL, & VISION. SEE ATTACHED

9. Do rates within an individual small group vary based on the age of the participants? YES

10. Are you in compliance with Montana Code Annotated 33-22-1809? YES

Please attach a copy of your last actuarial certification as required by 33-22-1809(5)