

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

To: All Health Insurance Companies

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

Date: July 24, 2013

Early renewal of individual and small group health insurance policies prior to January 1, 2014

Certain provisions of the Patient Protection and Affordable Care Act (ACA) go into effect on January 1, 2014. These provisions afford insurance consumers additional protections and benefits not currently provided under 2013 health plans. The 2014 reforms are effective only for non-grandfathered health plans issued or renewed on or after January 1, 2014.

Some health insurers may attempt to delay providing these additional protections and benefits in the individual and small group markets by renewing as many policies as possible prior to the January 1, 2014, implementation date. Such policies would begin coverage prior to that implementation date and terminate as late as December 31 of 2014, effectively postponing implementation of the ACA protections and benefits for up to a year. In addition, these risks would not be added to the single risk pool until 2015.

While renewal in this manner is not invalid per se, certain restrictions apply to renewals made prior to the expiration of the current plan or policy year (early renewals). The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), issues this advisory memorandum to advise insurers of those early renewal activities that are prohibited in the individual and small group contexts.

Early Renewal

An insurer may not increase the premium on an individual or group health insurance policy more frequently than once every 12 months. Mont. Code Ann. § 33-22-107(1). As a result, any insurer practicing early renewal to postpone ACA implementation may not charge a higher premium on a renewal policy with substantially similar benefits and cost-sharing as the pre-renewal policy. An insurer may charge a higher premium for significant changes to the benefits or deductible associated with the plan. However, an insurer may not make minor adjustments to such plan features as a pretext for increasing premium on early renewal. Such pretext-based increases violate § 33-22-107(1).

Additionally, an insurer may not practice unfair discrimination when selecting individuals or groups to whom it offers early renewal. Insurers may not discriminate “between individuals of the same class and of essentially the same hazard” when issuing insurance. § 33-18-206(2). The CSI interprets this provision to prohibit discrimination based upon age and group size. Therefore, an insurer offering early renewal may not decide whether to offer it to a specific individual, class, or group based upon these factors. Sections 33-22-526 and 33-22-1811 specifically prohibit discrimination on the basis of health status in small group plans. Offering to “early renew” coverage for certain employer groups based on the age and health status composition of that group would violate these statutes. Finally, offering insurance producers variable commissions dependent upon any of the aforementioned group criteria also constitutes unfair discrimination.

An insurer who increases premium upon early renewal in violation of § 33-22-107(1) is subject to a fine of up to \$25,000 per violation. Likewise, the CSI may assess a similar fine to any insurer found to unfairly discriminate in the early renewal context. Pursuant to its authority under §§ 33-1-311(4), 33-1-315 and 33-1-401, the CSI may perform targeted investigations, including market conduct examinations, to identify and terminate these illegal practices.

For any questions regarding this advisory memorandum, call Nick Mazanec, CSI Staff Attorney at (406) 444-2040.