

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
6.6.2503, 6.6.2504, 6.6.2505,) PROPOSED AMENDMENT
6.6.2506, 6.6.2507, 6.6.2508, and)
6.6.2509, relating to health)
maintenance organizations)

TO: All Concerned Persons

1. On March 16, 2018, at 9:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the basement floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on March 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

~~6.6.2503 DEFINITIONS A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain definitions respecting the words defined in the Montana Health Maintenance Organization Act or this rule unless the definitions comply with the definitions in the Montana Health Maintenance Organization Act and this rule. Definitions other than those set forth in the Montana Health Maintenance Organization Act or this rule may be used if they do not extend, modify, or conflict with the definitions contained in the Montana Health Maintenance Organization Act and this rule.~~

~~All definitions used in the contract and evidence of coverage must be in alphabetical order. As used in these rules this subchapter, the Montana Health Maintenance Organization Act, and for the purpose of any terms used in the contract and evidence of coverage:~~

~~(1) "Basic health care services" means basic health care services as defined in 33-31-102(2), MCA.~~

(2) remains the same but is renumbered (1).

~~(3) "Copayment" means the amount a subscriber an enrollee must pay to receive a specific service that is not fully prepaid.~~

~~(4) "Dependent" means:~~

- ~~(a) a spouse of the subscriber;~~
- ~~(b) an unmarried dependent child of the subscriber who has not reached age 18 or a greater age agreed to between the health maintenance organization and the contract holder;~~
- ~~(c) an unmarried dependent child of the subscriber over the age of 18, or over a greater age agreed to between the health maintenance organization and the contract holder, who is both incapable of self-support because of mental retardation, mental illness, or physical incapacity and chiefly dependent upon the subscriber for support and maintenance; or~~
- ~~(d) an unmarried dependent child of the subscriber who is attending a recognized college, university, or trade or secondary school on a full-time basis. As used in this definition, "dependent child" means:
 - ~~(i) related to the subscriber as either a natural child, a legally adopted child, or a stepchild; or~~
 - ~~(ii) any other child residing in the subscriber's household who qualifies as a dependent of the subscriber or the subscriber's spouse under the United States Internal Revenue Code and the Federal Tax Regulations.~~~~
- ~~(5) "Enrollee" means an enrollee as defined in 33-31-102, MCA.~~
- ~~(6) "Evidence of coverage" means an evidence of coverage as defined in 33-31-102, MCA.~~
- (3) "Emergency care services" means:
 - (a) if within the service area:
 - (i) covered health care services rendered by affiliated providers under unforeseen conditions that require immediate medical attention; and
 - (ii) covered health care services from non-affiliated providers under unforeseen conditions that require immediate medical attention, but only when delay in receiving care from the health maintenance organization could reasonably be expected to cause severe jeopardy to the enrollee's condition; and
 - (b) medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the service area.
- ~~(7) remains the same but is renumbered (4).~~
- ~~(8) "Health care services" means health care services as defined in 33-31-102(8), MCA.~~
- ~~(9) through (13) remain the same, but are renumbered (5) through (9).~~
- ~~(14) "Provider" means a provider as defined in 33-31-102, MCA. "Person", as used in that definition, means a person as defined in 33-31-102, MCA.~~
- ~~(15) through (17) remain the same, but are renumbered (10) through (12).~~

AUTH: 33-31-103, MCA

IMP: 33-31-101 through 33-31-405, MCA

REASON: The CSI proposes to remove the first two paragraphs of this rule because they are more a prohibition on health maintenance organization contracts than definitions. Those paragraphs have been moved to ARM 6.10.2506. The proposal removes several definitions that are already defined by Montana statute, and includes a definition for "emergency care services" because that term was cited in ARM 6.6.2508 without being defined. The CSI has taken the definition of

"emergency care services" from model law 432 of the National Association of Insurance Commissioners to provide consistency in regulation of health maintenance organizations.

6.6.2504 FILING EXEMPTION FOR HEALTH MAINTENANCE OPERATED BY INSURER OR HEALTH SERVICE CORPORATION AS A PLAN (1) A health maintenance organization operated as a plan (defined in 33-31-102, MCA) need not file with the commissioner, as part of its application for a certificate of authority, the financial statement required by 33-31-201(3)(d)(vi), MCA, if the same financial statement has been filed with the commissioner already under other laws or rules administered by the commissioner.

AUTH: 33-31-103, 33-31-201(7), MCA
IMP: 33-31-201, MCA

REASON: The CSI proposes to remove the subsection citation to 33-31-201, MCA, because it is no longer correct. In addition, the CSI proposes to modify the language to make it clearer that for the financial statement requirement to be waived, this office must have already received that same financial statement.

6.6.2505 MULTIDISCIPLINARY ADVISORY BOARDS (1) The membership of a health maintenance organization advisory board must include multidisciplinary providers or other individual representatives from at least three different health-related fields.

AUTH: 33-31-103, MCA and SB 353, statement of intent, p. 2, lines 15-18
IMP: 33-31-222, MCA

REASON: The CSI proposes to clarify what "multidisciplinary" means in the context of this rule.

6.6.2506 REQUIREMENTS FOR CONTRACTS AND EVIDENCES OF COVERAGE (1) through (2)(f) remain the same.

(g) a description of the any copayments, limitations, or exclusions on the services, kind of services, benefits, or kind of benefits to be provided, including the such as any lawful copayments, limitations, or exclusions due to preexisting conditions, waiting or affiliation periods, or an enrollee's refusal of treatment;

(h) through (k) remain the same.

(l) in compliance with Title 33, chapter 32, MCA and with (4) of ARM 6.6.2509(4), a description of the health maintenance organization's method for resolving enrollee complaints, incorporating procedures to be followed by the enrollee if a dispute arises under the contract, including any requirements for arbitration; and

~~(m) if it is a group contract and group evidence of coverage that does not cover an enrollee, who is an inpatient in a hospital or a skilled nursing facility on the date of cancellation of the group contract, in accordance with the terms of the group~~

contract until discharged from the hospital or skilled nursing facility, a provision clearly disclosing that limitation of benefits.

(n) remains the same but is renumbered (m).

(3) In addition to the requirements under (2), a group contract and evidence of coverage must contain:

(a) a provision that the coverage shall not be cancelled or terminated without giving the enrollee at least 15 days from the day written notice of termination is mailed to the enrollee; and

(b) a provision that an enrollee who is an inpatient in a hospital or a skilled nursing facility on the date of discontinuance of the group contract shall be covered in accordance with the terms of the group contract until discharged from the hospital or skilled nursing facility, and that the enrollee may be charged the appropriate premium for coverage that was in effect prior to discontinuance of the group contract.

(3) through (5) remain the same but are renumbered (4) through (6).

(7) A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain any definitions that extend, modify, or conflict with those definitions contained in the Montana Health Maintenance Organization Act or ARM 6.10.2503. In addition, all definitions used in the contract and evidence of coverage must be in alphabetical order.

AUTH: 33-31-103, MCA

IMP: 33-31-301~~(3)(e)~~, 33-31-303, 33-31-307, 33-31-312~~(3)~~, MCA

REASON: The CSI proposes to update the rule to current law in several respects. First, the proposal modifies the language in (2)(g) to make it clear that any limitation on benefits must be disclosed, but this rule does not provide any authority to impose such limitations if they are prohibited by law. Second, (2)(l) has been modified to correctly cite the health utilization review laws in Title 33, chapter 32, MCA, which apply to health maintenance organizations. Also, a reference to arbitration clauses was removed, because they are prohibited by 27-5-114, MCA. Third, the group contract provision in (2)(m) has been moved to the new (3) on group contracts, and a requirement to provide notice of contract termination was added to conform to NAIC model law and the requirements for other group health policies contained in 33-22-530, MCA. Fourth, new (7) is a restatement of the requirement previously contained at the beginning of ARM 6.6.2503. Fifth, the changes to the implementing statutes are to make the statutory references current with existing law. The other changes that are proposed are nonsubstantive, to provide uniformity in the organization of the rule.

Finally, the CSI acknowledges that current federal law prohibits exclusions for preexisting conditions. Given that currently Montana statutes conflict with federal law in this area, the CSI has made the determination to make sure its rules continue to comply with Montana law. However, this does not mean that the CSI will enforce Montana law over federal law in this area, just that these rules will comply with Montana statutes in the event that federal laws on the issue ever change.

6.6.2507 PROHIBITED PRACTICES (1)(a) A health maintenance organization may not include in its contract and evidence of coverage a provision setting forth exclusions or limitations of services for preexisting conditions at the time of enrollment, except as permitted under 33-22-246, 33-22-514, or 33-22-1811, MCA.

~~(2)(b)~~ In addition to the requirements of (1), a health maintenance organization may not exclude or limit services for a preexisting condition when the enrollee transfers coverage from one individual contract to another or when the enrollee converts coverage under his conversion option, except to the extent of a preexisting condition limitation or exclusion remaining unexpired under the prior contract, ~~unless it clearly discloses that exclusion or limitation in the evidence of coverage.~~

(2) and (3) remain the same, but are renumbered (3) and (4).

AUTH: ~~33-22-1811~~, 33-31-103, MCA

IMP: 33-18-203, 33-22-1811, 33-31-111~~(7)~~, 33-31-301~~(3)(c)~~, 33-31-312, MCA

REASON: The CSI proposes to modify the preexisting condition exclusionary language to comport with NAIC model law 432. The proposal renumbers the sections and removes citations to subsections of implementing statutes to conform to Montana rule drafting guidelines. Also, the rule fixes an error citing to 33-18-1811, MCA, as an authorizing statute, when the rule properly just implements 33-31-103, MCA. Finally, the CSI cites to the discussion about preexisting conditions in ARM 6.6.2506.

6.6.2508 SERVICES (1)(a) A health maintenance organization shall establish and maintain adequate arrangements to provide the health services contracted for by its subscribers including:

(i) through (iv) remain the same but are renumbered (a) through (d).

(b) and (c) remain the same but are renumbered (2) and (3).

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(iv)(d)~~ treatment of minor illnesses; and

~~(v)(e)~~ treatment of chronic illnesses.

(2) remains the same but is renumbered (4).

~~(3)(5)~~ Out-of-area services are subject to the same copayment requirements set forth in subsection (3) of ARM 6.6.2509.

(6) When an enrollee is traveling or temporarily residing out of a health maintenance organization's service area, the health maintenance organization must provide benefits for reimbursement for emergency care services and transportation that is medically necessary and appropriate under the circumstances to return the enrollee to a health maintenance organization provider. These out-of-area emergency care services and transportation may only be subject to some or all of the following requirements:

(a) the condition could not have been reasonably foreseen;

(b) the enrollee could not reasonably arrange to return to the service area to receive treatment from a health maintenance organization provider; or

(c) the travel or temporary residence must be for some purpose other than the receipt of medical treatments.

~~(4)(7)~~ In addition to the basic health care services required to be provided in ~~(4) subsection (2) of this rule~~, a health maintenance organization may offer to its enrollee any supplemental health care services it chooses to provide. Limitations as to time and cost may vary from those applicable to basic health care services.

AUTH: 33-31-103, MCA

IMP: ~~33-31-102(2)~~, 33-31-202(3), 33-31-301(3), MCA

REASON: The CSI proposes to include (6) to conform with NAIC model law 432, provide greater uniformity of regulation of health maintenance organizations, and ensure that all major health insurance plans cover emergency medical services whether inside or outside of a service area. The proposed changes to the implementing statutes are meant to remove references to statutes and particular subsections of statutes that do not apply to this rule. Finally, the CSI proposes nonsubstantive changes to this rule to conform with Montana rule drafting guidelines and make the rule more readable.

6.6.2509 OTHER REQUIREMENTS (1)(a) A health maintenance organization shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the contract and evidence of coverage are issued and upon request thereafter.

(a) If a provider is no longer affiliated with a health maintenance organization, the health maintenance organization shall provide notice of such change to its affected subscribers in a timely manner.

(b) Subject to the approval of the commissioner, a health maintenance organization may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a health maintenance organization shall must make a list of all providers available to subscribers upon request.

(b) remains the same but is renumbered (c).

(2) and (3) remain the same.

~~(4)(a) A health maintenance organization must establish and maintain a complaint system to provide reasonable procedures for the prompt and effective resolution of written complaints.~~

~~(b) A health maintenance organization shall provide complaint forms to be given to enrollees who wish to register written complaints. The forms must include the address and telephone number to which complaints must be directed and must also specify any required time limits imposed by the health maintenance organization.~~

~~(c) The complaint system must require the health maintenance organization to acknowledge a complaint in writing within 10 days and resolve or make a final determination of the complaint within 60 days from the date the complaint is registered. This period may be extended if~~

~~(i) there is a delay in obtaining the documents or records necessary for resolving the complaint; or~~

~~(ii) the health maintenance organization and the enrollee mutually agree in writing.~~

~~(d) Pending the resolution of a written complaint filed by a subscriber or enrollee, coverage may not be terminated for any reason which is the subject of the written complaint, unless the health maintenance organization has, in good faith, made a reasonable effort to resolve the written complaint through its complaint system and coverage is being terminated as provided for in subsection (2) of ARM 6.6.2507.~~

~~(e) If an enrollee's complaint and grievance may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his rights and duties under the agreement at the time the complaint is registered. An agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. A health maintenance organization that makes binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.~~

(4) Health maintenance organizations are required to file annual audited financial reports, as set forth in ARM 6.6.3501 through 6.6.3521.

AUTH: 33-31-103, MCA

IMP: ~~33-31-202(3)(c), 33-31-301(3)(a), 33-31-301(5)(a),~~ 33-31-211, 33-31-301, 33-31-303, MCA

REASON: The CSI proposes to restructure (1) to make it more in line with Montana rule drafting standards and make it more readable. The proposal strikes old (4) relating to complaints because it has been superseded by the health utilization review laws contained in Title 33, chapter 32, MCA, which apply to health maintenance organizations. The addition of new (4), along with the changes to 33-31-211, MCA, by the 2017 Montana legislature, is meant to put health maintenance organizations on equal footing with other health insurers with respect to their financial reporting requirements. Finally, the proposed changes to the implementing statutes are meant to remove references to statutes that no longer apply, and to include a statutory reference based on new (4).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

5. Michael A. Kakuk, Attorney, has been designated to preside over and conduct this hearing.

6. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> to specify for which program the person

wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

7. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State on February 13, 2018.