



COMMISSIONER OF SECURITIES AND INSURANCE

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Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: ALL INTERESTED PERSONS

From: TROY DOWNING

Commissioner of Securities and Insurance, Office of the Montana State Auditor

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Advisory Memorandum Regarding Treatment of Risk Adjustment Payments under the Montana Reinsurance Association Act

This memorandum explains how current statute classifies risk adjustment payments among insurers under the Patient Protection and Affordable Care Act (the “ACA”) for purposes of calculating “total premium volume” under the Montana Reinsurance Association Act (the “Act”). As explained below, risk adjustment payments under the ACA are not counted as part of “total premium volume” under the Act. **This constitutes an interpretation of current statute, and this interpretation is subject to change based on future legislative changes or other changes in applicable facts or law.**

Background

The Act requires each member insurer of the Montana Reinsurance Association to pay an assessment equal to 1.2% of its “total premium volume covering Montana residents, from the prior calendar year, regardless of type of license.” Mont. Code Ann. § 33-22-1313(1)(a)(i). The Act requires the Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”) to administer the assessment and to consider the recommendation of the Montana Reinsurance Association board of directors when determining the assessment amounts. *See* Mont. Code Ann. §§ 33-22-1313(1); 33-22-1313(4).

The ACA requires relatively low-risk health plans and health insurance issuers providing coverage in the individual or small group markets within a state to fund payments to relatively high-risk health plans and health insurance issuers providing coverage in those markets within the state. *See* 42 U.S.C. § 18063. States, or the United States Department of Health and Human Services on behalf of states, administer the risk adjustment payments. *See* 45 C.F.R. § 153.310.

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CSI consulted with the Montana Reinsurance board of directors regarding whether risk adjustment payments under the ACA are considered to be part of “total premium volume” under the Act. The board did not take a position on the matter, but several member insurers provided input with varying perspectives directly to CSI.

Interpretation

CSI does not interpret “total premium volume” under the Act to include risk adjustment payments under the ACA. While the Act does not define “total premium volume,” the Montana Insurance Code defines “premium” as “the consideration for insurance, by whatever name called.” Mont. Code Ann. § 33-15-102 (emphasis added). *See also* Mont. Code Ann. §§ 33-15-1102(6) (defining “premium” as the “contractual consideration charged to an insured for insurance”); 1-2-107 (establishing general rule that “[w]henver the meaning of a word or phrase is defined any part of [the Montana Code Annotated], such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears”). In turn, consideration is a contract principle that requires “contracting parties, each as to the other, [to] confer some legal benefit and/or incur some detriment as an inducement to performance [of the contract].” *State Pub. Employee’s Ass’n v. Office of the Governor*, 271 Mont. 450, 898 P.2d 675, 678 (1995). *See also* Mont. Code Ann. §§ 33-1-201(5)(a) (defining “insurance” as form of contract); 28-2-102(4) (requiring consideration for formation of contract); 28-2-801 (standard for “good consideration”). Given that risk adjustment payments are obligations imposed by federal statute outside of any contract between an insured and an insurer, “total premium volume” does not account for risk adjustment payments among insurers, and assessments imposed on member insurers of the Montana reinsurance association apply to premiums without adjustments for risk adjustment payments.