



# COMMISSIONER OF SECURITIES AND INSURANCE

Troy Downing  
Commissioner

Office of the  
Montana State Auditor

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## ADVISORY MEMORANDUM

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To: ALL INTERESTED PERSONS

From: TROY DOWNING

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

Date: 05/04/2023

**Advisory Memorandum Regarding  
Guaranteed Issue of Medicare Supplement Policies  
Upon Medicaid Disenrollment.**

***Background***

In response to the COVID-19 pandemic, Congress enacted the Families First Coronavirus Response Act of 2020 (FFCRA). The FFCRA, in part, conditioned enhanced federal funding on states ceasing most eligibility-based disenrollment from Medicaid (the continuous enrollment provision) for the duration of the Public Health Emergency (PHE), which was declared in March 2020.

On December 29, 2022, Congress signed into law the Consolidated Appropriations Act of 2023, which ended the continuous enrollment provision and directed state Medicaid agencies to resume eligibility determinations on April 1, 2023, regardless of the PHE. Accordingly, the Montana Department of Health and Human Services will be conducting ongoing eligibility redeterminations in the coming months.

Montana's Administrative Rules mandate "guaranteed issue" for Medicare supplement policies to "eligible persons" who "enroll under the policy during the period specified . . . ." Admin. R. Mont. § 6.6.507C(1)(a). Eligible persons include those who, "upon first becoming eligible for benefits under Medicare Part A and B [are] enrolled in the Qualified

840 Helena Avenue, Helena, Montana 59601  
(main fax) 406.444.3413 | (securities fax) 406.444.5558  
(insurance consumer services fax) 406.444.1980 | (legal fax) 406.444.3499  
(phone) 800.332.6148 or 406.444.2040 | (email) [csi@mt.gov](mailto:csi@mt.gov) | (web) [www.csimt.gov](http://www.csimt.gov)

Medicare Beneficiary Program... or full Medicaid, Admin. R. Mont. § 37.83.802, and no longer qualif[y] due to income or eligibility changes . . . .” Admin R. Mont. § 6.6.507C(2)(h). For those whose “enrollment is terminated involuntarily,” the period specified for guaranteed issue eligibility “begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.” Admin. R. Mont. § 6.6.507C(3)(b).

As a result of the continuous enrollment provision and the PHE, there are likely Montanans who (1) did not enroll in Medicare A or B when they first became eligible; or (2) did not take advantage of “guaranteed issue” of a Medicare supplement upon first enrolling in Medicare because of the continuous enrollment provision. Recognizing that administrative rules are to be interpreted according to their plain language<sup>1</sup>, the CSI has determined an advisory memorandum will assist in ensuring administrative rules are properly applied in this unique circumstance.

### ***Guidance***

**To ensure Montanans understand they have access to coverage they could have obtained if not for the PHE or the continuous enrollment provision, the CSI hereby advises that the plain language of Admin. R. Mont. § 6.6.507C provides as follows:**

1. Any applicant who is eligible for and enrolls in Medicare Part B pursuant to the special enrollment period under 42 CFR § 406.27 is considered to have enrolled in Medicare Part B upon “first becoming eligible for benefits under Medicare Part A and B” as that phrase is used in Admin R. Mont. § 6.6.507C(2)(h).
2. Any applicant who has exhausted their open enrollment period as described in Admin. R. Mont § 6.6.507B as a result of the continuous enrollment provision is also considered to have enrolled in Medicare Part B upon “first becoming eligible for benefits under Medicare Part A and B” as that phrase is used in Admin R. Mont. § 6.6.507C(2)(h).
3. Any applicant who is eligible for and enrolls in Medicare Part B pursuant to 42 CFR § 406.27 following the termination of Medicaid coverage due to an eligibility redetermination is considered to have had Medicaid enrollment “terminated involuntarily” as that phrase is used in Admin. R. Mont. § 6.6.507C(3)(b). Furthermore, “receives a notice of termination” should be read to include when the person actually receives the notice by mail or other appropriate means.

The CSI’s intent in issuing this advisory memorandum is to clarify that individuals who delayed application to Medicare Part B or delayed application for Medicare supplement

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<sup>1</sup> *State v. Frickey*, 2006 MT 122, P19 (“the proper interpretation of an administrative rule must first be discerned through its plain language”).

policies in reliance on Medicaid due to the continuous enrollment provision will have from the date the individual receives notice of the termination of Medicaid until 63 days after the date Medicare coverage is terminated pursuant to an eligibility redetermination to qualify for “guaranteed issue” if they otherwise comply with Admin. R. Mont § 6.6.507C. Given that this memorandum does not alter or change existing law, this guidance should be read to apply retroactively.

**This advisory memorandum is informational only and does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.**