

**HB 562 MCHA Immunity**  
**Justification for limiting the liability of the association**

- The association is not “just another insurance company.”
- It is a statutorily created health insurance pool for high-risk individuals who cannot get coverage elsewhere and for HIPAA eligibles, most of whom are also uninsurable.
- There are no statutorily established “reserve” levels and the association does not operate with the “risk based capital” reserve protections that other health insurance companies must meet.
- The association does not carry stop loss insurance or have any other type of liability coverage that would protect the association itself in the event of a large punitive or exemplary damage award.
- Premiums, although higher than those in the marketplace generally, fall far short of meeting claims for this high-risk population. Therefore, the assets of the risk pool are supplemented by assessments on licensed health insurers. Those assessments are statutorily capped at 1% of premium written.
- Montana’s risk pool is large when compared to other states’ risk pools. Because of the growth in numbers of individuals covered, existing available revenue sources cannot keep pace with losses.
- Grievances are resolved by appeal to the grievance committee, whose voting members consist of an employee of the State Auditor and the consumer board member, as well as three insurance company board members. The third party administrator (BCBSMT) is not responsible for final decisions on denying claims or making eligibility determinations. The grievance committee is ultimately responsible for those decisions.
- The original (unamended) language of HB562 provides as follows: “There is no liability on the part of and a cause of action may not be brought against the association or its employees for exemplary, punitive or other noncontractual damages.” This would allow insureds to sue the association if the grievance committee wrongfully denied a claim and seek payment for that claim. However, it would protect the association from punitive or exemplary damage claims that could bankrupt the association, which could result in an inability to pay claims or necessitate closing to pool to new members.
- If a punitive damage award bankrupted the association, other individuals who rely on the MCHA to pay their medical claims **may** be left with no recourse. The guarantee association does not cover the MCHA.
- The association has the authority to borrow money from the board of investments, but only to pay claims expenses or operating or administrative expenses. It is unclear whether or not they could borrow from the state to pay a judgment of exemplary damages. It is also not clear what would happen if the MCHA did borrow money from the state and then was unable to pay it back.
- If the legislature wanted to continue provide medically needy Montanans with the protection of high-risk pool coverage, it might be faced the decision of whether or not to “rescue” the association with state funds.
- Right now, Montana is using association pool coverage to fulfill its obligations under federal HIPAA portability law. If the association did not exist, state law would have to be changed in order to provide for another mechanism to achieve HIPAA compliance.