EXHIBIT
DATE 1/7/09
HB 151

Revise Breast Reconstruction Requirements --HB 151
Sponsored by Arlene Becker at the request of the State Auditor's Office

What does this bill do?

The federal Women's Health and Cancer Rights Act of 1998 requires that if a group health plan, insurance company, or health maintenance organization covers a mastectomy (full or partial removal of the breast), breast reconstruction must be covered as well. This requirement was implemented by the Montana legislature in 1997, along with other requirements of the Health Insurance Portability and Accountability Act. Pursuant to federal law, Montana's breast reconstruction statute, 33-22-135 MCA, must comply with a minimum federal floor of protection.

The State Auditor's Office is charged with enforcing this statute and over the last several years has become aware that the existing statute does not mirror the federal law in a few key areas. This bill corrects those deficiencies. To the extent that any state's law is less protective than the federal requirement, that state law is preempted.

This bill strikes existing language which states that the mastectomy must be as a result of breast cancer (section 1, subsection 1). The federal Centers for Medicare and Medicaid Services and the United States Department of Labor have made it clear that any woman who undergoes a mastectomy is entitled to breast reconstruction, regardless of whether or not cancer is currently present. The federal law does not limit breast reconstruction to those with an affirmative diagnosis of cancer. Reconstruction benefits, however, are limited to those women who have undergone a mastectomy. Sometimes mastectomies are performed because genetic testing has revealed an extremely high probability of cancer occurring in the future or because of cancer that already exists in the other breast.

Why do we need this legislation?
These changes in the current law bring Montana into compliance with the minimum federal requirements and

EXHIBIT 4
DATE 1/7/9
HB 151

correct the preemption problem by eliminating the requirement that the mastectomy "resulted from breast cancer" and that the benefit is limited to "one reconstructive breast surgery" (section 1, subsection 2). It also adds the federal language that requires that "the treatment must be determined in consultation with the attending physician and the patient" (section 1, new subsection 2).

In addition, the bill adds the federal requirement that notice of these benefits be given to all insureds and that insurers cannot penalize their insureds or healthcare providers for seeking these benefits (section 1, new subsections 6 and 7).