

## 1 HOUSE BILL NO. 48

2 INTRODUCED BY B. MCCHESENEY

3 BY REQUEST OF THE STATE AUDITOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL BUSINESS HEALTH INSURANCE POOL  
6 KNOWN AS INSURE MONTANA TO IMPROVE EFFICIENCY; REMOVING IMPEDIMENTS TO FUND  
7 TRANSFERS; BASING ELIGIBILITY FOR PREMIUM ASSISTANCE PAYMENTS ON FEDERAL POVERTY  
8 LEVELS; AMENDING SECTIONS 33-22-2004, 33-22-2006, 33-22-2007, AND 33-22-2008, MCA; AND  
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 33-22-2004, MCA, is amended to read:14 **"33-22-2004. Powers and duties of board.** (1) The board shall:

15 (a) establish an operating plan that includes but is not limited to administrative and accounting  
16 procedures for the operation of the purchasing pool and a schedule for premium incentive payments and premium  
17 assistance payments and that complies with the powers and duties provided for in this section;

18 (b) require eligible small employers and employees to reapply for premium incentive payments or  
19 premium assistance payments on an annual basis;

20 (c) upon timely reapplication, give priority to eligible small employers and their employees who are  
21 already receiving the premium incentive payments and premium assistance payments. If the reapplication is more  
22 than 30 days late, the priority will not be given and the eligible small employer will be added to the waiting list  
23 provided for in 33-22-2008.

24 (d) upon timely reapplication as provided in subsection (1)(c), allow eligible small employers to retain  
25 eligibility to receive premium incentive payments and premium assistance payments on behalf of their employees  
26 if the number of their employees goes over the maximum number, not to exceed nine employees, established  
27 by the commissioner in administrative rule;

28 (e) renew purchasing pool group health plan coverage for all employer groups, even if the employer  
29 group no longer receives or is eligible for a premium incentive payment or premium assistance payment;

30 (f) adopt a premium incentive payment schedule that is based on a percentage of the eligible small

1 employer's share of the premium and apply the schedule uniformly to all registered eligible small employers who  
2 join the purchasing pool or obtain qualified association health plan coverage;

3 (g) adopt premium assistance payment amounts that, in combination with the premium incentive  
4 payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or, with the assistance  
5 of the department of public health and human services, adopt a premium assistance payment schedule that is  
6 equitably proportional to the income or wage level for employees;

7 (h) establish criteria for determining which employees will be eligible for a premium assistance payment  
8 and the amount that the employees will receive from among those eligible small employer groups that have  
9 registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool  
10 group health plan or qualified association health plan. However, to the extent that federal funds are used to make  
11 some premium assistance payments, criteria for those payments must be consistent with any waiver  
12 requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility  
13 for employees is not limited to the waiver eligibility groups.

14 (i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach  
15 the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance  
16 payments during the current biennium;

17 (j) limit the total amount of premium incentive payments and premium assistance payments paid to the  
18 amount of available state, federal, and private funding;

19 (k) approve no more than six fully insured group health plans with different benefit levels that will be  
20 offered to eligible small employers participating in the purchasing pool;

21 (l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers  
22 authorized to do business in this state;

23 (m) contract with no more than three health insurance issuers to underwrite the group health plans that  
24 will be offered through the purchasing pool;

25 (n) request that the department of public health and human services seek a federal waiver for medicaid  
26 matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216,  
27 if it is in the best interests of the purchasing pool;

28 (o) comply with the participation requirements provided for in 33-22-1811;

29 (p) meet at least four times annually; and

30 (q) within 2 years after the purchasing pool is established and considered stable by the board, examine

- 1 the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance  
2 from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.
- 3 (2) The board may:
- 4 (a) borrow money;
- 5 (b) enter into contracts with insurers, administrators, or other persons;
- 6 (c) hire employees to perform the administrative tasks of the purchasing pool;
- 7 (d) assess its members for costs associated with administration of the purchasing pool and request that  
8 the commissioner transfer funds or request that the department of public health and human services transfer  
9 funds from the special revenue account, as provided in 53-6-1201, for that purpose;
- 10 (e) set contribution levels for eligible small employers;
- 11 (f) at least 30 days before the end of the current fiscal year, request that funds be transferred from the  
12 funds appropriated for premium incentive payments and premium assistance payments to the department of  
13 revenue for reimbursement of the general fund to offset tax credits if the number of eligible small employers  
14 seeking premium incentive payments and employees receiving premium assistance payments is insufficient to  
15 exhaust ~~at least 90% of~~ the appropriated funds for the premium incentive payments and premium assistance  
16 payments during a fiscal year;
- 17 (g) at least 90 days before the end of the current fiscal year, request that funds be transferred from the  
18 funds allocated for tax credits to the funds appropriated for premium incentive payments and premium assistance  
19 payments if the number of eligible small employers seeking tax credits is insufficient to exhaust ~~at least 90% of~~  
20 the funds allocated for tax credits during a fiscal year;
- 21 (h) seek other federal, state, and private funding sources;
- 22 (i) accept all small ~~employer groups~~ employers who apply for coverage under the small business health  
23 insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and  
24 have not been registered by the commissioner pursuant to 33-22-2008;
- 25 (j) receive from the commissioner's office or the department of public health and human services  
26 premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf  
27 of employees, collect the employer or employee premiums from the eligible small employer or employees, and  
28 make premium payments to insurers on behalf of the eligible small employers and employees;
- 29 (k) request the commissioner to direct more than 30% of the available funding for premium ~~incentives~~  
30 incentive payments and premium assistance payments to qualified association health plan coverage instead of

1 purchasing pool coverage; and

2 (l) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

3

4 **Section 2.** Section 33-22-2006, MCA, is amended to read:

5 **"33-22-2006. Premium incentive payments, premium assistance payments, and tax credits for**  
6 **small employer health insurance premiums paid -- eligibility for small group coverage -- amounts.** (1) An

7 employer is eligible to apply for premium incentive payments and premium assistance payments or a tax credit  
8 under this part if the employer and any related employers:

9 (a) did not have more than the number of employees established for eligibility by the commissioner at  
10 the time of registering for premium incentive payments or premium assistance payments or a tax credit under  
11 33-22-2008;

12 (b) provide or will provide a group health plan that meets the requirements of creditable coverage for the  
13 employer's and any related employer's employees;

14 (c) do not have delinquent state tax liability owing to the department of revenue from previous years; and

15 (d) have been registered as eligible small employer participants by the commissioner as provided in  
16 33-22-2008; ~~and.~~

17 ~~(e)(2)~~ In addition to the requirements in subsection (1), a small employer is eligible to apply for a tax  
18 credit under this part if the small employer and any related employers do not have any employees, not including  
19 an owner, partner, or shareholder of the business, who received more than \$75,000 in wages, as defined in  
20 39-71-123, from the small employer or related employer in the prior tax year.

21 ~~(2)(3)~~ An In addition to the requirements of subsections (1) and (2), an owner, partner, or shareholder  
22 of a business an eligible small employer who received more than \$75,000 in wages, as defined in 39-71-123, and  
23 those individuals' spouses who are employees are not eligible under this chapter for:

24 ~~———— (a) any premium assistance payment. However, a premium incentive payment may be made for the~~  
25 ~~premium share paid by the business for group health insurance coverage for:~~

26 ~~———— (i) the owner, partner, or shareholder;~~

27 ~~———— (ii) a spouse of those listed in subsection (2)(a)(i) who is also an employee of the business; or~~

28 ~~———— (iii) dependents of those listed in subsection (2)(a)(i).~~

29 ~~———— (b) a tax credit for group health insurance plan premiums paid by the business or the owner, partner,~~  
30 ~~or shareholder eligible small employer for group health insurance plan coverage for the individual or the~~

1 individual's dependents.

2 (4) In addition to the requirements in subsection (1), an owner or employee is not eligible to apply for a  
 3 premium assistance payment under this part if the owner or employee has a household income greater than  
 4 400% of the federal poverty level for the year in which an application or application renewal is made.

5 (5) Subject to the requirements of subsection (4), the small business health insurance pool may  
 6 authorize a premium incentive payment for the premium share paid by an eligible small employer and related  
 7 employers for a group health plan for:

8 (a) the owner or employee of the eligible small employer and related employers;

9 (b) a spouse of an owner or employee provided for in subsection (5)(a); or

10 (c) dependents of the owner or employee provided for in subsection (5)(a).

11 ~~(3)~~(6) An employee, including an owner, partner, or shareholder or any dependent of an employee, who  
 12 is also eligible for the children's health insurance program provided for under Title 53, chapter 4, part 10, or  
 13 medicaid under Title XIX of the Social Security Act may become ineligible to receive a premium assistance  
 14 payment.

15 ~~(4)~~(7) The commissioner shall establish, by rule, the maximum number of employees that an employer  
 16 may be employed to qualify employ to be qualified as a an eligible small employer under subsection (1). However,  
 17 the number may not be less than two employees or more than nine employees. The maximum number may be  
 18 different for eligible small employers seeking premium incentive payments and premium assistance payments  
 19 than for eligible small employers seeking a tax credit. The number must be set to maximize the number of  
 20 employees receiving coverage under this part. The commissioner may not change the maximum employee  
 21 number more often than every 6 months. If the maximum number of allowable employees is changed, the change  
 22 does not disqualify registered eligible small employers with respect to the tax year for which the eligible small  
 23 employer has registered.

24 ~~(5)~~(8) Except as provided in subsection ~~(6)~~ (3), an eligible small employer may claim a tax credit in the  
 25 following amounts:

26 (a) (i) not more than \$100 each month for each employee and \$100 each month for each employee's  
 27 spouse, if the eligible small employer covers the employee's spouse, if the average age of the group is under 45  
 28 years of age; or

29 (ii) not more than \$125 each month for each employee and \$100 each month for each employee's  
 30 spouse, if the eligible small employer covers the employee's spouse, if the average age of the group is 45 years

1 of age or older; and

2 (b) not more than \$40 each month for each dependent, other than the employee's spouse, if the eligible  
3 small employer is paying for coverage for the dependents, not to exceed two dependents of an employee in  
4 addition to the employee's spouse.

5 ~~(6)~~(9) An eligible small employer may not claim a tax credit:

6 (a) in excess of 50% of the total premiums paid by the eligible small employer for the qualifying small  
7 group;

8 (b) for premiums paid from a medical care savings account provided for in Title 15, chapter 61; or

9 (c) for premiums for which a deduction is claimed under 15-30-2131 or 15-31-114.

10 ~~(7)~~(10) An eligible small employer may not claim a premium incentive payment in excess of 50% of the  
11 total premiums paid by the eligible small employer for the qualifying small group."

12

13 **Section 3.** Section 33-22-2007, MCA, is amended to read:

14 **"33-22-2007. Filing for tax credit -- filing for premium incentive payments and premium assistance**  
15 **payments.** (1) An eligible small employer may:

16 (a) apply the tax credit against taxes due for the current tax year on a return filed pursuant to Title 15,  
17 chapter 30 or 31; or

18 (b) ~~if the eligible small employer did not sponsor a group health plan that provides creditable coverage~~  
19 ~~for employees during the 2 years prior to the first tax year of registration for the premium incentive payments or~~  
20 ~~premium assistance payments or operates a new business that is less than 2 years old and has never sponsored~~  
21 ~~a group health plan that provides creditable coverage~~; apply to receive monthly premium incentive payments and  
22 premium assistance payments to be applied to coverage obtained through the purchasing pool or qualified  
23 association health plan coverage approved by the commissioner.

24 (2) An eligible small employer may not, in the same tax year, apply the tax credit against taxes due for  
25 the current tax year as provided for in subsection (1)(a) and receive premium incentive payments as provided  
26 for in subsection (1)(b).

27 (3) The premium incentive payments and premium assistance payments provided for in subsection (1)(b)  
28 must be paid pursuant to a plan of operation implemented by the board and any applicable administrative rules.

29 (4) (a) If an eligible small employer's tax credit as provided in subsection (1)(a) exceeds the employer's  
30 liability under 15-30-2103 or 15-31-121, the amount of the excess must be refunded to the eligible small

1 employer. The tax credit may be claimed even if the eligible small employer has no tax liability under 15-30-2103  
2 or 15-31-121.

3 (b) A tax credit is not allowed under 15-30-2367, 15-31-132, or any other provision of Title 15, chapter  
4 30 or 31, with respect to any amount for which a tax credit is allowed under this part.

5 (5) The department of revenue or the commissioner may grant a reasonable extension for filing a claim  
6 for premium incentive payments or premium assistance payments or a tax credit whenever, in the department's  
7 or the commissioner's judgment, good cause exists. The department of revenue and the commissioner shall keep  
8 a record of each extension and the reason for granting the extension.

9 (6) (a) If an employer that would have a claim under this part ceases doing business before filing the  
10 claim, the representative of the employer who files the tax return or pays the premium may file the claim.

11 (b) If a corporation that would have a claim under this part merges with or is acquired by another  
12 corporation and the merger or acquisition makes the previously eligible corporation ineligible for the premium  
13 incentive payments, premium assistance payments, or tax credit in the future, the surviving or acquired  
14 corporation may file for the premium incentive payments, premium assistance payments, or tax credit for any  
15 claim period during which the former eligible corporation remained eligible.

16 (c) If an employer that would have a claim under this part files for bankruptcy protection, the receiver may  
17 file for the premium incentive payments, premium assistance payments, or tax credit for any claim period during  
18 which the employer was eligible."

19

20 **Section 4.** Section 33-22-2008, MCA, is amended to read:

21 **"33-22-2008. Registration -- funding limitations -- transfers -- maximum number -- waiting list --**  
22 **information transfer for tax credits.** (1) (a) Each eligible small employer that proposes to apply for premium  
23 incentive payments and premium assistance payments or a tax credit under this part must be registered each  
24 year with the commissioner.

25 (b) An eligible small employer may submit a new application for the premium incentive payments and  
26 premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer's  
27 registration for the next year, the registration application must be renewed each year.

28 (c) The registration application must include the number of individuals covered, as of the date of the  
29 registration application, under the small group health plan for which the employer is seeking premium incentive  
30 payments and premium assistance payments or a tax credit. If, after the initial registration, the number of

1 individuals increases, the employer may apply to register the additional individuals, but those additional  
2 individuals may be added only at the discretion of the commissioner, who shall limit enrollment based on available  
3 funds.

4 (d) A small employer is not eligible to apply for premium incentive payments and premium assistance  
5 payments or a tax credit for a number of employees, or the employees' spouses or dependents, over the number  
6 that has been established in 33-22-2006 as the maximum number of employees ~~an a small~~ employer may have  
7 in order to qualify for registration for the time period in question.

8 (e) ~~An A small~~ employer's ~~decision to apply~~ registration for premium incentive payments and premium  
9 assistance payments or a tax credit is irrevocable for 12 months or until the purchasing pool group health plan  
10 or qualified association health plan renews its registration, whichever time period is less. An eligible small  
11 employer may choose to discontinue receiving any premium incentive payments and premium assistance  
12 payments or tax credits at any time.

13 (2) The commissioner shall register qualifying eligible small employers in the order in which applications  
14 are received and according to whether ~~or not~~ the application is for premium incentive payments and premium  
15 assistance payments or a tax credit. Initially, 60% of the available funding must be dedicated to provide and  
16 maintain premium incentive payments and premium assistance payments for eligible small employers ~~who have~~  
17 ~~not sponsored group health plans that provide creditable coverage in the previous 2 years and who chose to join~~  
18 the purchasing pool or a qualified association health plan and 40% of the available funding must be dedicated  
19 to tax credits for eligible small employers who currently sponsor a small group health plan that provides creditable  
20 coverage. Funding may be transferred from the allocated fund for premium incentive payments and premium  
21 assistance payments to the general fund for tax credits or from the funds allocated for tax credits to the allocated  
22 fund for premium incentive payments and premium assistance payments if the board requests the transfer as  
23 provided in 33-22-2004 and the commissioner approves the request.

24 (3) (a) The maximum number of eligible small employers is reached when the anticipated amount of  
25 claims for premium incentive payments and premium assistance payments and tax credits has reached ~~95%~~  
26 100% of the amount of money allocated for premium incentive payments and premium assistance payments and  
27 tax credits.

28 (b) The commissioner may establish a waiting list for applicants that are otherwise qualified for  
29 registration but cannot be registered because of a lack of money or because the maximum number of eligible  
30 small employers has been reached.

1 (c) The commissioner shall mail to each employer registered under this section a notice of registration  
2 containing a unique registration number and indicating eligibility for either premium incentive payments and  
3 premium assistance payments or a tax credit. The commissioner shall also issue to each employer that is eligible  
4 for premium incentive payments and premium assistance payments or the tax credit a certificate, placard, sticker,  
5 or other evidence of participation that may be publicly posted.

6 (d) The commissioner shall notify all persons who applied for registration and who were not accepted  
7 that they were not registered and the reason that they were not registered.

8 (4) A prospective participant shall apply for registration on a form provided by the commissioner. The  
9 prospective participant shall:

10 (a) provide the number of employees and whether the employer qualifies under 33-22-2006;

11 (b) provide information that is necessary to estimate the amount of the premium incentive payments and  
12 premium assistance payments payable to the applicant or the amount of the tax credit available to the applicant,  
13 such as the ages of employees or dependents, relationships of employees' dependents, and information required  
14 by the department of public health and human services for determination of eligibility for premium assistance  
15 payments matched by federal funds;

16 (c) indicate whether the prospective employer intends to pursue the claim as a tax credit through the  
17 income tax process or through premium incentive payments and premium assistance payments to be applied  
18 toward purchasing pool or eligible qualified association health plan coverage;

19 ~~(d) indicate whether or not the employer previously sponsored a group health plan that provided~~  
20 ~~creditable coverage and, if so, when and for how long; and~~

21 ~~(e)~~(d) provide any additional information determined by the commissioner to be necessary to support  
22 an application.

23 (5) Each year, an eligible small employer ~~participants~~ shall timely reregister with the commissioner in  
24 order to determine the participant's continued eligibility. The commissioner shall accept applications for continued  
25 registration:

26 (a) for purchasing pool participants at any time within 12 months of the initial registration approval or  
27 within the time period for renewal of the coverage under this part, whichever is longer;

28 (b) for tax credit participants on December 1 of each year. The commissioner shall stop accepting  
29 renewal applications for tax credit participants 60 calendar days later.

30 (6) The commissioner shall transmit to the department of revenue, at least annually, a list of eligible small

1 employers that are taxpayers entitled to the tax credit and shall specify the taxpayer's name and tax identification  
2 number, the tax year to which the credit applies, the amount of the credit, and whether the credit is to be applied  
3 against taxes due on the taxpayer's return or paid as premium incentive payments or premium assistance  
4 payments. Unless there has been a finding of fraud or misrepresentation on the part of the taxpayer regarding  
5 issues relating to eligibility for the tax credit, the department of revenue may not redetermine or change the  
6 commissioner's determination regarding the taxpayer's entitlement to and amount of the tax credit.

7 (7) If the department of public health and human services receives approval for a section 1115 waiver  
8 as provided in 53-2-216, the commissioner shall work with the department of public health and human services  
9 with regard to eligibility determinations as required by federal law or waiver conditions."

10

11 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

12

- END -