



CSI REPORT TO ECONOMIC AFFAIR INTERIM COMMITTEE

September 22, 2021

2021 LEGISLATIVE SESSION

Bills that go into effect on October 1, 2021

- HB 117 Revise auto insurance laws related to claims history (Rep. Ricci)
Limits the amount of time an insurer may use adverse claims history for rates and coverage.
- HB 195 Revise insurance claims history information relating to property insurance (Rep. Ricci)
Limits the amount of time an insurer may use adverse claims history for rates and coverage.
- HB 290 Provide for a Self-Storage Insurance Act (Rep. Tschida)
Limits the amount of time an insurer may use adverse claims history for rates and coverage
 - Applications for this product will be available at csimt.gov by October 1
- HB 64 Authorize the Securities Uniform Whistleblower Act (Rep. Moore)
Provides monetary awards to whistleblowers and provide protections for those who make whistleblower complaints.
- SB 101 Provide for the direct patient care safe harbor act (Sen. Smith)
Creates the standards for a direct patient care agreement between a patient and provider so that the agreement is exempt from insurance regulation.
- SB 149 Exempt health care sharing ministries from insurance laws (Rep. McGillvray)
Established the criteria for HCSM to be exempt from regulation as insurance.
- SB 363 Revise insurance laws related to annuities (Sen. Fitzpatrick)
Creates a best interest standard of care for insurance producers who sell annuities.
- SB 76 Revise the captive insurance regulatory and supervision account (Sen. Salomon)
Changes the amount of premium tax CSI may hold to regulate captive insurance companies.

RULEMAKING

The CSI is currently in the process reviewing its administrative agency rules for necessary updates, repeal, or modification in fulfillment of its statutory obligation to review agency rules every two years. The review process will continue into 2022.

The CSI has completed the required rulemaking for SB 363 that will take effect on October 1, 2021. The CSI is in the process of drafting rules for public comment to implement SB 395 which will take effect on January 1, 2022.

- SB 363 (Revise insurance laws related to annuities)

SB 363 requires that an insurance producer who engages in the sale of annuity products must complete a **one-time, 4-credit training course** approved by the CSI. Further, the law adopted an option for producers with an existing license and who have taken a similar training course under the prior model act (from 2017) to take an **alternative one-time, one-credit course** approved by the CSI. The CSI will review and approve these training courses using its regular process for continuing education courses.

Existing licensees will have a **six-month grace period** to complete the training requirements. **New licensees** are prohibited from engaging in the sale of annuities until the required training course is completed. Companies must continue to verify that producer training has been completed before allowing a producer to sell their annuity products.

The CSI also adopted model forms for producers and companies to use during the sales transaction. These forms are used to confirm that the consumer is aware of which products the producer is licensed to sell and to make clear that the transaction does not include recommendations regarding the consumer's investment portfolio.

- SB 395 (Pharmacy Benefit Manager Oversight Act)

SB 395 requires certain PBMs to be licensed by the CSI as of January 1, 2022. During the licensure process, the CSI will review the pharmacy networks of the PBMs to determine if the pharmacy network is adequate.

The goal of the CSI is to draft rules that will ensure access to pharmacists for all Montanans without unnecessary hardship, maintain affordability of pharmacy and health plan coverage, and provide for sufficient transparency for consumers, health plans and health plan purchasers to make informed decisions. Access to health care of any kind can be difficult based upon Montana's geography and rural areas. The availability of pharmacy services varies depending on population, urban density and the pharmacists' willingness to enter into contracts under reasonable terms and conditions. Mileage to a location is not the only challenge faced by Montanans. Other geographic barriers, like mountains and rivers, as well as extreme weather conditions, can limit access to services for many people across the state.

While the CSI believes that Montana consumers should have reasonable access to brick- and mortar pharmacies, we also understand rigid network adequacy requirements can lead to premium increases. If a PBM (and its contracted health plan) is forced to enter into contracts with every pharmacy, the PBM loses its negotiating power to pay lower reimbursement amounts with the promise of driving business to certain pharmacies.

The CSI led dozens of meetings on the topic of network adequacy with all interested stakeholders. Informally, the CSI has compiled comments and solicited information for months. The CSI anticipates submitting draft rules submitted to the Secretary of State by September 30 to meet the January 1 deadline. CSI anticipates posting the PBM licensure application by October 1, 2021.

REINSURANCE

The Reinsurance Program was created in 2019 to stabilize the individual health insurance market, maintain competition, and reduce premiums. Membership in the Reinsurance Program is comprised of the disability (health) insurance carriers who have issued or renewed individual policies in Montana during the previous 12 months.

Under Mont. Code Ann. § 33-22-1313, the CSI assesses each member insurer 1.2% of its total premium volume covering Montana residents from the prior calendar and deposits the money into a state special revenue account. Federal grant money designated for this purpose is also deposited into the special revenue account. Reimbursement of claims eligible for reimbursement will be paid to insurance carriers by December 1, 2021. If excess funds are available, § 33-22-1313(3) mandates that such funds shall be used to offset future claims or to reduce future assessments. Additional federal funds from the American Rescue Plan Act have recently become available to provide additional monies to fund reimbursement claims.

Some Reinsurance Program highlights:

- Montana's Reinsurance Program uses a claims-based model to reimburse eligible health insurers for a percentage of an enrollee's claims costs exceeding a specific threshold (attachment point) and up to a specified ceiling (reinsurance cap). For 2020 and 2021, the Board established a coinsurance rate of 60%, with an attachment point of \$40,000 up to a reinsurance cap of \$101,750.
- For 2020, the Montana Reinsurance Program received receive federal pass-through funding of \$22,490,988. Per Mont. Code Ann. § 33-22-1313, the CSI is authorized to assess each member insurer 1.2% of its total premium volume covering Montana residents from the prior calendar year. On December 4, 2020, the CSI mailed first-time assessments under the reinsurance program to insurers and collected \$10,032,580.90 in assessments.
- Due to the Montana Reinsurance Program and the 1332 State Innovation Waiver, Montana has seen average individual market premium rate decreases in 2020 as follows:

| Carrier | With Reinsurance | Without Reinsurance |
|----------------|------------------|---------------------|
| BCBSMT | -14.1% | -6.7% |
| COOP | -11.9% | -3.9% |
| Pacific Source | -13.4% | -4.7% |

LEGAL ACTIONS

The CSI is a criminal and administrative enforcement agency. In 2021, the CSI finalized 16 administrative and legal actions against insurance and securities companies and their employees for violations of Montana code and administrative rules. The CSI has 24 administrative actions pending hearing and has filed 16 additional criminal actions in state district court for violations of Montana code on misdemeanor and felony charges.

According to the FBI, property and casualty insurance fraud costs the average U.S. family between \$400 and \$700 per year in the form of increased premiums. This year, the CSI prioritized taking actions against consumers who buy insurance only after they suffer a loss from an accident and then attempt to collect from the company for the period that they were uninsured. Buying insurance after-the-fact is consumer fraud and a key component of increased premiums. The CSI is committed to educating consumers that this practice may be a felony and will be prosecuted by the Commissioner.

The second area of focus is to conduct an audit of multi-level marketing (MLM) compliance with registration laws. Many MLM companies provide legitimate products and services, but some are simply a mechanism to target vulnerable people and make them unrealistic promises to get rich, thereby conducting a pyramid or Ponzi scheme. The best way to monitor the activities of these companies is to enforce the registration requirement on all companies operating in the state.