

DRAFT PROPOSAL to the 2011 MONTANA LEGISLATURE

EXTERNAL REVIEW

The Montana Commissioner of Securities and Insurance (CSI) proposes a bill to adopt the National Association of Insurance Commissioners' (NAIC) external review model act. The model language was incorporated into the Patient Protection and Affordable Care Act (PPACA), which became federal law on March 23, 2010. The PPACA and subsequent federal regulation requires health plans to comply with external review processes that, at a minimum, include the consumer protections contained in the NAIC Uniform External Review Model Act (model #76).

This model provides a process whereby a consumer can seek independent medical review of claims denied by an insurance company for medical necessity reasons.

Montana has an independent medical review law now, but it does not meet the requirements of the model law or PPACA. In addition, the PPACA and the NAIC external review model seek to make the external review standards more uniform in all states. **Such uniformity benefits consumers who change residence between states and multi-state insurance companies who want to do business here.**

PPACA preempts state insurance laws to the extent that **if a state law falls below the minimum federal "floor" of consumer protection, then that law is preempted by the federal standard and the federal standard will control.** A state law can be more protective, but not less protective. The U.S. Department of Health and Human Services has created a new office called the Office of Consumer Information and Insurance Oversight (OCIIO). **It is expected that OCIIO will enforce federal health insurance law in a state that does not adopt and enforce the minimum federal standards for private health insurance.**

In the interests of moving towards uniformity and meeting the minimum federal standards, CSI proposes to adopt the NAIC external review model. This bill will enable CSI to meet the minimum federal floor of consumer protections, so that the State of Montana can retain its ability to be the primary regulator of private health insurance and thereby more effectively protect its consumers.

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