HOUSE BILL NO. 183

INTRODUCED BY C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO HIGH-DEDUCTIBLE HEALTH INSURANCE PLANS AND EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS; PROVIDING VARIOUS TAX INCENTIVES; PROVIDING EXCEPTIONS TO CERTAIN UNFAIR TRADE PRACTICES; LIMITING PROVISIONS FOR REIMBURSEMENT OF PREFERRED AND NONPREFERRED PROVIDERS; PROVIDING THAT CERTAIN EMPLOYER REIMBURSEMENT ARRANGEMENTS ARE NOT CONSIDERED INSURANCE; IMPOSING DUTIES ON THE COMMISSIONER OF INSURANCE; PROVIDING RULEMAKING AUTHORITY TO THE COMMISSIONER OF INSURANCE; PROVIDING AN EXEMPTION FOR THE INSURANCE PREMIUM TAX; ALLOWING AN INCOME TAX CREDIT FOR CERTAIN EMPLOYER CONTRIBUTIONS TO HIGH-DEDUCTIBLE HEALTH INSURANCE PREMIUMS; ALLOWING A REDUCTION IN ADJUSTED GROSS INCOME TO CERTAIN TAXPAYERS FOR HIGH-DEDUCTIBLE HEALTH INSURANCE PREMIUMS; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-30-2110, 33-2-705, 33-18-206, 33-18-208, AND 33-22-1706, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Affordable High-Deductible Health Insurance Plan Act".

NEW SECTION. **Section 2. Purpose.** It is the intent of the legislature to:

(1) authorize the commissioner to establish flexible guidelines for high-deductible health plan designs that are affordable to citizens of this state and to increase the availability of these types of plans by disability insurance insurers licensed in this state;

(2) encourage the offering of affordable high-deductible health plans and health reimbursement arrangement-only plans with the specific intent of reaching many otherwise uninsured citizens of this state and the general intent of creating affordable comprehensive health insurance for all citizens of this state; and

(3) enhance the affordability of insurance with flexible high-deductible health plans by allowing rewards

and incentives for participation in and adherence to health behaviors that recognize the value of the personal responsibility of each citizen to maintain good health, seek preventive care services, and comply with approved treatments.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

(1) "Health reimbursement arrangement-only plan" means an arrangement under which employees receive tax-free reimbursements for qualified medical expenses up to a maximum dollar amount for a coverage period, that meets the requirements of sections 105 and 106 of the Internal Revenue Code, 26 U.S.C. 105 and 106, and as part of the arrangement the plan is not sold in connection with or packaged with health insurance coverage.

(2) "High-deductible health plan" means a health plan with an annual deductible of not less than a specific amount under the Internal Revenue Code and has the same meanings as a high-deductible health plan under section 223 of the Internal Revenue Code, 26 U.S.C. 223.

(3) "Internal Revenue Code" means the Internal Revenue Code as defined in 15-30-2101.

(4) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(5) "Plan coinsurance percentage" means the percentage of the covered expenses that the insurer will pay after all deductibles and copayments are made.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Provider" means an individual or entity licensed or legally authorized to provide health care services.

NEW SECTION. **Section 4. Wellness programs not considered unfair trade practices.** Insurers that include and operate wellness and health promotion programs, disease and condition management programs, health risk appraisal programs, and similar provisions in their high-deductible health plan policies in keeping with federal requirements may not be considered to be engaging in unfair trade practices under 33-18-206(2) and 33-18-208(2) with respect to the practices of illegal inducements, unfair discrimination, and rebating.

<u>NEW SECTION.</u> **Section 5. Preferred and nonpreferred providers -- prohibited provisions.** There may not be a required relationship between preferred provider and nonpreferred provider plan reimbursements for high-deductible health plans using nonpreferred provider reimbursements. The plans may not:

(1) deny health benefits for medically necessary covered services;

(2) have differences in benefit levels payable to preferred providers compared to other providers that unfairly deny benefits for covered services;

(3) have a plan coinsurance percentage applicable to benefit levels for services provided by nonpreferred providers that is less than 60% of the benefit levels under the policy for those services; or

(4) have an adverse effect on the availability or the quality of services.

<u>NEW SECTION.</u> **Section 6. Health cost reimbursement arrangements.** (1) The commissioner shall allow health reimbursement arrangement-only plans that encourage employer financial support of health insurance or health-related expenses recognized under the Internal Revenue Code.

(2) A health reimbursement arrangement-only plan may not be considered insurance under this title and the laws of this state.

(3) Individual health insurance policies funded through health reimbursement arrangement-only plans may not be considered employer-sponsored or group coverage under this title and the laws of this state, and nothing in this section may be interpreted to require an insurer to offer an individual health insurance policy for sale in connection with or packaged with a health reimbursement arrangement-only plan or to accept premiums from health reimbursement arrangement-only plans for individual health insurance policies.

<u>NEW SECTION.</u> **Section 7. Duties of commissioner -- rulemaking authority.** (1) The commissioner shall develop flexible guidelines for coverage and approval of high-deductible health plans that are designed to qualify under federal and state requirements as high-deductible health plans.

(2) The commissioner may encourage and promote the marketing of high-deductible health plans by disability insurance insurers in this state. However, nothing in this section may be construed to authorize the sale of insurance in violation of the requirements of law relating to the transaction of insurance in this state or prohibiting the interstate sale of insurance.

(3) The commissioner may conduct a national study of high-deductible health plans available in other states and determine if and how these products serve the uninsured and if they should be made available to the

citizens of this state.

(4) The commissioner may develop an automatic or expedited approval process for high-deductible health plans already approved under the laws of this state or other states.

(5) The commissioner may adopt rules regarding the implementation of [sections 1 through 9], including rules regarding the design, promotion, advertisements and solicitations, expedited review of standardized policies, and regulation of high-deductible health plans.

NEW SECTION. **Section 8. Exemption from insurance premium tax.** Insurers are exempt from the tax on net premiums for insurance premiums paid by Montana residents for high-deductible health plans pursuant to 33-2-705(2).

NEW SECTION. **Section 9. Income tax credit and deduction.** An employer may be entitled to receive income tax credits pursuant to [sections 10 and 11] for making high-deductible health plans available to employees. Individuals may be entitled to a reduction in adjusted gross income for certain premium payments made for a high-deductible health plan as provided in 15-30-2110(13).

NEW SECTION. **Section 10. Employer tax credit for high-deductible health insurance premiums.** There is a credit against the taxes imposed by this chapter for eligible employers who are individuals for certain qualified health insurance expenses paid by the employer for coverage of qualifying employees. The credit must be computed and administered as provided in [section 11].

NEW SECTION. **Section 11. Employer tax credit for high-deductible health insurance premiums.** (1) (a) Subject to the provisions of this section, there is a credit against the tax imposed by this chapter for qualified health insurance expenses paid by a taxpayer for qualifying employees during the tax year.

(b) The amount of the credit is limited to $250 for each qualifying employee and is not available to a taxpayer with more than 50 qualifying employees. A taxpayer is not eligible for the credit if a high-deductible health plan is not made available to all qualifying employees pursuant to the applicable provisions of section 125 of the Internal Revenue Code, 26 U.S.C. 125.

(2) A qualifying employee means an individual employed by the taxpayer directly or whose compensation is reported on internal revenue service form 1099.

(3) Qualified health insurance expenses means expenses:

(a) incurred for a high-deductible health plan as defined by section 223 of the Internal Revenue Code, 26 U.S.C. 223;

(b) of at least $250 annually; and

(c) paid for 12 consecutive months.

(4) The credit allowed under this section may not be claimed as a carryback and may not exceed the taxpayer's tax liability under chapter 30 or 31. The credit allowed under this section may be used as a carryforward against the taxes imposed by chapter 30 or 31 for 5 succeeding tax years.

(5) An exclusion, deduction, or credit is not allowed under any other provision of chapter 30 or 31 with respect to any amount for which a credit is allowed under this section.

(6) A tax credit is not allowed under this section if the employer receives premium assistance payments under Title 33, chapter 22, part 20.

(7) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-3301, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss for Montana income tax purposes.

(8) The department may adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section.

Section 12. Section 15-30-2110, MCA, is amended to read:

"15-30-2110. Adjusted gross income. (1) Subject to subsection ~~(13)~~ <u>(14)</u>, adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-2101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-2602.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; and

(s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in 15-31-163.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and who file separate Montana income tax returns are not required to recompute allowable passive losses according to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must

be shown on that spouse's return; otherwise, the loss must be split equally on each return.

(8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C. 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

(9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return. The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross income.

(10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(11) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of $3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of $3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection

applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection (12)(a)(iv), not to exceed $5,000, from the taxpayer's adjusted gross income if the taxpayer:

(i) is a health care professional licensed in Montana as provided in Title 37;

(ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;

(iii) has had a student loan incurred as a result of health-related education; and

(iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment program described in subsection (12)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional.

<u>(13) A taxpayer may reduce adjusted gross income by the entire amount of premium payments made by the taxpayer for a high-deductible health plan, as defined in section 223 of the Internal Revenue Code, 26 U.S.C. 223, that provides coverage for the taxpayer or the taxpayer's spouse or dependents to the extent that the deduction has not been included in federal adjusted gross income and the expenses are not covered or reimbursed by other sources, including but not limited to a health reimbursement arrangement-only plan as defined in [section 3].</u>

~~(13)~~<u>(14)</u> Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

~~(14)~~<u>(15)</u> By November 1 of each year, the department shall multiply the amount of pension and annuity income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii) by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results to the nearest $10. The resulting amounts are effective for that tax year and must be used as the basis for the exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

Section 13. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%. <u>Insurers are exempt from the payment of this tax for insurance premiums paid by Montana residents for high-deductible health plans as defined by section 223 of the Internal Revenue Code, 26 U.S.C. 223.</u>

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report required by the commissioner for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided

premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 14. Section 33-18-206, MCA, is amended to read:

"33-18-206. Unfair discrimination prohibited -- life insurance, annuities, and disability insurance. (1) ~~No~~ A person ~~shall~~ may not make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable ~~thereon~~ on the contract or in any other of the terms and conditions of ~~such~~ the contract.

(2) ~~No~~ Except as provided in [section 4] regarding high-deductible health plans, a person ~~shall~~ may not make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable ~~thereunder~~ under the contract or in any of the terms or conditions of ~~such~~ the contract or in any other manner ~~whatever~~.

(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay, or developmental disability.

(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial

projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay, or developmental disability.

(5) As used in this section, the following definitions apply:

(a) "Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.

(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.

(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition."

Section 15. Section 33-18-208, MCA, is amended to read:

"33-18-208. Contract to contain agreements -- rebates prohibited -- life, disability, and annuity contracts. Except as otherwise expressly provided by law, ~~no~~ a person ~~shall~~ may not knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to ~~such~~ the contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to ~~such~~ an insurance or annuity contract any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits ~~thereon~~ on the contract or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract except as provided in [section 4] regarding high-deductible health plans;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to ~~such~~ an insurance or annuity contract or in connection ~~therewith~~ with the contract and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value ~~whatsoever~~ not specified in the contract."

Section 16. Section 33-22-1706, MCA, is amended to read:

"33-22-1706. Permissible and mandatory provisions in provider agreements, insurance policies, and subscriber contracts. (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain certain other components designed to control the cost and improve the quality of health care for insureds and subscribers, including:

(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. ~~If~~ With the exception of high-deductible health plans, if the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider~~.~~; and

(c) provisions in high-deductible health plans that do not require a relationship between preferred providers and nonpreferred providers that comply with [section 5].

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.

(3) A plan offering prepaid dental services under this part must offer its insureds the right to obtain dental care from any licensed dental care provider of their choice, subject to the same terms and conditions imposed under subsection (1)."

NEW SECTION. **Section 17. Codification instruction.** (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 through 9].

(2) [Section 10] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 10].

(3) [Section 11] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 11].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 19. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2010.

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