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HOUSE BILL NO. 63
INTRODUCED BY J. DOOLING
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INSURANCE REGULATORY LAWS;
UPDATING REFERENCES TO FEDERAL REGULATIONS AND QUARTERLY LISTINGS OF ALIEN
INSURERS; REQUIRING LIFE INSURERS TO ANNUALLY PROVIDE AN OPINION RELATING TO
RESERVES; AND AMENDING SECTIONS 15-31-552, 33-2-307, 33-2-407, 33-22-211, 33-22-1313, 33-22-
1316, AND 33-32-102, MCA."

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

Section 1. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation dissolution or withdrawal certificates and tax clearance certificates furnished. (1) For purposes of voluntary withdrawal or dissolution as set forth in Title 35, upon request of a corporation, the department of revenue may furnish to it a dissolution or withdrawal certificate verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana.

~~(3) For an authorized insurance company regulated under Title 33, the commissioner of insurance may furnish the certificate verifying that the corporation has filed all applicable returns and that taxes have been paid through and including the corporation's final year of existence in Montana."~~

Section 2. Section 33-2-307, MCA, is amended to read:

"33-2-307. Requirements for eligible surplus lines insurers -- list of eligible surplus lines insurers. (1) If an unauthorized insurer is domiciled in any state, a surplus lines insurance producer may not

1 place insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer:

2 (a) is authorized to issue the same kind of property or casualty insurance in its domiciliary jurisdiction;

3 and

4 (b) maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals
5 the greater of:

6 (i) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

7 (ii) \$15 million. An insurer possessing less than \$15 million capital and surplus may satisfy the
8 requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The
9 commissioner's finding must be based on factors that include:

10 (A) the quality of management, capital, and surplus of a parent company;

11 (B) company underwriting profit and investment income trends;

12 (C) market availability; and

13 (D) company record and reputation within the industry.

14 (2) The commissioner may not make an affirmative finding of acceptability when the surplus lines
15 insurer's capital and surplus is less than \$4.5 million.

16 (3) If an unauthorized insurer is an alien insurer, a surplus lines insurance producer may not place
17 insurance with that unauthorized insurer unless, at the time of placement, the unauthorized insurer appears on
18 the national association of insurance commissioners' ~~Non-Admitted Insurers Quarterly Listing~~ Quarterly Listing
19 of Alien Insurers.

20 (4) A list of eligible surplus lines insurers must be published at least semiannually by the
21 commissioner for a range of risks, including disability income insurance. This subsection does not require the
22 commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines
23 insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said
24 in issuing the list of eligible surplus lines insurers referred to in this subsection.

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

26 (a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks
27 or other evidences of ownership.

28 (b) "Surplus", as used in the financial requirements of this section, means funds over and above

1 liabilities and capital of the insurer for the protection of policyholders."
2

3 **Section 3.** Section 33-2-407, MCA, is amended to read:

4 **"33-2-407. Standard valuation of reserve liabilities law.** (1) The commissioner shall annually value
5 or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and
6 pure endowment contracts of every life insurer doing business in this state issued on or before the operative
7 date of the valuation manual. In calculating the reserves under this subsection, the commissioner may use
8 group methods and approximate averages for fractions of a year or otherwise.

9 (2) The commissioner shall annually value or cause to be valued the reserve liabilities for all
10 outstanding life insurance contracts, annuities, and pure endowment contracts, accident and health contracts,
11 and deposit-type contracts of every company issued after the operative date of the valuation manual in
12 accordance with the valuation manual.

13 (3) In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the
14 commissioner may accept any valuation made or caused to be made by the insurance supervisory official of
15 any state or other jurisdiction when the valuation complies with the minimum standard provided in this part.

16 (4) Any insurer that has adopted any standard of valuation producing greater aggregate reserves than
17 those calculated according to the minimum standards provided in this part may, with the approval of the
18 commissioner, adopt any lower standard of valuation but not lower than the minimum in this section. For the
19 purposes of this section, the holding of additional reserves previously determined by an appointed actuary to be
20 necessary to render the opinion required in subsections (5) and (6) may not be considered to be the adoption of
21 a higher standard of valuation.

22 (5) (a) Each life insurer doing business in this state prior to the operative date of the valuation manual
23 shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items
24 held in support of the policies and contracts specified by the commissioner by rule are computed appropriately,
25 are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and
26 comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and
27 add any other items considered necessary to its scope.

28 (b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in

1 the opinion required by subsection (5)(a) an opinion of the same qualified actuary as to whether the reserves
2 and related actuarial items held in support of the policies and contracts specified by the commissioner by rule
3 make adequate provision for the insurer's obligations under the policies and contracts, including but not limited
4 to the benefits under and expenses associated with the policies and contracts. In developing the opinion, the
5 qualified actuary shall consider the assets held by the insurer with respect to the reserves and related actuarial
6 items, including but not limited to the investment earnings on the assets and the considerations anticipated to
7 be received and retained under the policies and contracts.

8 (c) The commissioner may provide by rule for a transition period for establishing any higher reserves
9 that the qualified actuary may consider necessary in order to render the opinion required by this subsection (5).

10 (d) Each opinion required by this subsection (5) must be governed by the following provisions:

11 (i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must
12 be prepared to support each actuarial opinion.

13 (ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a
14 period specified by rule or if the commissioner determines that the supporting memorandum provided by the
15 insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner,
16 the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the
17 basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

18 (iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve
19 liabilities for each year ending on or after December 31, 1996.

20 (iv) The opinion must apply to all business in force, including individual and group health insurance
21 plans, in form and substance acceptable to the commissioner as specified by rule.

22 (v) The opinion must be based on standards adopted from time to time by the actuarial standards
23 board and on additional standards as the commissioner may prescribe by rule.

24 (vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner
25 may accept the opinion filed by that insurer with the insurance supervisory official of another state if the
26 commissioner determines that the opinion reasonably meets the requirements applicable to a company
27 domiciled in this state.

28 (vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any

1 person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with
2 respect to the actuary's opinion.

3 (viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be
4 defined in rules by the commissioner.

5 (6) (a) After the operative date of the valuation manual, each life insurer doing business in this state
6 shall annually submit the opinion of a qualified actuary regarding whether the reserves and related actuarial
7 items held in support of the policies and contracts specified by the commissioner by rule are:

8 (i) computed appropriately;

9 (ii) based on assumptions that satisfy contractual provisions;

10 (iii) consistent with prior reported amounts; and

11 (iv) in compliance with the applicable laws of this state.

12 (b) After the operative date of the valuation manual, each life insurer doing business in this state shall
13 also annually include in the opinion required in subsection (6)(a) an opinion by the same qualified actuary on
14 whether the reserves and related actuarial items held in support of the policies and contracts specified in the
15 valuation manual make adequate provision for the company's obligations under the policies and contracts,
16 including but not limited to the benefits under and expenses associated with the policies and contracts. The
17 opinion required in this subsection (6)(b) must consider the reserves and related actuarial items in light of the
18 assets held by the company with respect to those reserves and related actuarial items, including but not limited
19 to the investment earnings on the assets and the considerations anticipated to be received and retained under
20 the policies and contracts.

21 (c) A qualified actuary shall prepare a memorandum in support of each actuarial opinion under this
22 subsection (6). The memorandum must be in the form and substance specified in the valuation manual and as
23 provided by the commissioner.

24 ~~(e)~~(d) The opinion under this subsection (6):

25 (i) must be submitted with the annual statement reflecting the valuation of the reserve liabilities for
26 each year ending on or after the operative date of the valuation manual;

27 (ii) must apply to all policies and contracts subject to this subsection (6) and to other actuarial liabilities
28 identified in the valuation manual; and

1 (iii) must be based on the actuarial standards board's standards and any additional standards
2 prescribed in the valuation manual.

3 ~~(d)~~(e) If the insurer fails to provide a supporting memorandum at the request of the commissioner
4 within a period specified in the valuation manual or if the commissioner determines that the supporting
5 memorandum provided by the insurer fails to meet the standards prescribed by the valuation manual or is
6 otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense
7 of the insurer to review the opinion and the basis for the opinion and prepare the supporting memorandum
8 required by the commissioner.

9 ~~(e)~~(f) For an opinion required to be submitted by a foreign or alien insurer, the commissioner may
10 accept the opinion filed by that insurer with the insurance supervisory official of another state if the
11 commissioner determines that the opinion reasonably meets the requirements applicable to an insurer
12 domiciled in this state.

13 ~~(f)~~(g) (i) Except as provided in subsection ~~(6)(f)(ii)~~ (6)(g)(iii), the appointed actuary is not liable for
14 damages to any person other than the insurer and the commissioner for any act, error, omission, decision, or
15 conduct with respect to the appointed actuary's opinion.

16 (ii) The provisions of subsection ~~(6)(f)(i)~~ (6)(g)(i) do not apply in cases of fraud or willful misconduct.

17 ~~(g)~~(h) The commissioner shall define by rule any disciplinary action that may be taken by the
18 commissioner against the insurer or the appointed actuary."
19

20 **Section 4.** Section 33-22-211, MCA, is amended to read:

21 **"33-22-211. Time of payment of claims.** There shall be a provision as follows:

22 "Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for
23 which this policy provides any periodic payment will be paid ~~immediately~~ pursuant to 33-18-232 upon receipt of
24 due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this
25 policy provides periodic payment will be paid.... (insert period for payment which must not be less frequently
26 than monthly), and any balance remaining unpaid upon the termination of liability will be paid immediately upon
27 receipt of due written proof."
28

1 **Section 5.** Section 33-22-1313, MCA, is amended to read:

2 **"33-22-1313. Association member assessments.** (1) (a) (i) For 2020 and each year thereafter, the
3 commissioner shall assess each member insurer 1.2% of its total premium volume covering Montana residents,
4 from the prior calendar year, regardless of type of license.

5 (ii) For purposes of subsection (1)(a)(i), total premium volume may not include premiums that member
6 insurers collect on any coverage issued for excepted benefits as defined in 33-22-140.

7 (b) The board shall determine the timing of the assessment.

8 (c) The commissioner shall consider the board's recommendation when determining the assessment
9 amounts.

10 (d) The commissioner shall verify the amount of each insurer's assessment based on annual financial
11 statements and other reports determined to be necessary.

12 (2) The association shall determine and report to the commissioner the association's reinsurance
13 payments and other expenses for the previous calendar year, including administrative expenses and any
14 incurred but not reported claims for the previous calendar year.

15 (a) The report must consider investment income and other appropriate gains.

16 (b) The report must include an estimate of the assessments needed to cover the expected
17 reinsurance claims for the following calendar year.

18 (3) If assessments and other funds collected by the association exceed the actual losses and
19 administrative expenses of the association, the board shall use the excess funds to offset future claims or to
20 reduce future assessments.

21 (4) The commissioner may, after notice and hearing:

22 (a) suspend or revoke the certificate of authority to transact insurance in this state of any member
23 insurer that fails to pay an assessment;

24 (b) impose a penalty on any insurer that fails to pay an assessment when due; or

25 (c) use any power granted to the commissioner to collect any unpaid assessment.

26 (5) An eligible health insurer may not submit claims for reinsurance payments unless the insurer has
27 a medical loss ratio of 80% or greater, as defined in ~~45 CFR 158.224~~ 45 CFR 158.232(f)."

28

1 **Section 6.** Section 33-22-1316, MCA, is amended to read:

2 **"33-22-1316. Administration of reinsurance payments.** (1) Claims that are incurred during a benefit
3 year and are submitted for reimbursement in the following benefit year by the date established by the board in
4 the plan of operation will be allocated to the benefit year in which they are incurred. Claims submitted after the
5 date established by the board following the benefit year in which they were incurred will be allocated to the next
6 benefit year in accordance with the board's operating rules, policies, and procedures.

7 (2) If funds accumulated in the reinsurance program account in the state special revenue fund with
8 respect to a benefit year are expected to be insufficient to pay all program expenses, claims for reimbursement,
9 and other disbursements allocable to that benefit year, all claims for reimbursement allocable to that benefit
10 year must be reduced proportionately to the extent necessary to prevent a deficiency in the funds for that
11 benefit year. Any reduction in claims for reimbursement with respect to a benefit year must apply to all claims
12 that are allocated to that benefit year without regard to when those claims were submitted for reimbursement,
13 and any reduction must be applied to each claim in the same proportion.

14 (3) If funds accumulated in the reinsurance program account in the state special revenue fund exceed
15 the actual claims for reimbursement and program expenses of the association in a given benefit year, the board
16 shall use such excess funds to pay reinsurance claims in successive benefit years and may recommend to the
17 commissioner a reduction in the assessment amount for the following year.

18 (4) For each applicable benefit year, the board shall notify eligible health insurers of reinsurance
19 payments to be made for the applicable benefit year by the date established by the board in the plan of
20 operation in the year following the applicable benefit year.

21 (5) By ~~August 15~~ December 31 of the year following the applicable benefit year, the board shall
22 disburse all applicable reinsurance payments payable to an eligible health insurer."
23

24 **Section 7.** Section 33-32-102, MCA, is amended to read:

25 **"33-32-102. Definitions.** As used in this chapter, the following definitions apply:

26 (1) "Adverse determination", except as provided in 33-32-402, means:

27 (a) a determination by a health insurance issuer or its designated utilization review organization that,
28 based on the provided information and after application of any utilization review technique, a requested benefit

1 under the health insurance issuer's health plan is denied, reduced, or terminated or that payment is not made in
2 whole or in part for the requested benefit because the requested benefit does not meet the health insurance
3 issuer's requirement for medical necessity, appropriateness, health care setting, level of care, or level of
4 effectiveness or is determined to be experimental or investigational;

5 (b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a
6 requested benefit based on a determination by a health insurance issuer or its designated utilization review
7 organization of a person's eligibility to participate in the health insurance issuer's health plan;

8 (c) any prospective review or retrospective review of a benefit determination that denies, reduces, or
9 terminates or fails to provide or make payment in whole or in part for a benefit; or

10 (d) a rescission of coverage determination.

11 (2) "Ambulatory review" means a utilization review of health care services performed or provided in an
12 outpatient setting.

13 (3) "Authorized representative" means:

14 (a) a person to whom a covered person has given express written consent to represent the covered
15 person;

16 (b) a person authorized by law to provided substituted consent for a covered person; or

17 (c) a family member of the covered person, or the covered person's treating health care provider, only
18 if the covered person is unable to provide consent.

19 (4) "Case management" means a coordinated set of activities conducted for individual patient
20 management of serious, complicated, protracted, or otherwise complex health conditions.

21 (5) "Certification" means a determination by a health insurance issuer or its designated utilization
22 review organization that an admission, availability of care, continued stay, or other health care service has been
23 reviewed and, based on the information provided, satisfies the health insurance issuer's requirements for
24 medical necessity, appropriateness, health care setting, level of care, and level of effectiveness.

25 (6) "Clinical peer" means a physician or other health care provider who:

26 (a) holds a nonrestricted license in a state of the United States; and

27 (b) is trained or works in the same or a similar specialty to the specialty that typically manages the
28 medical condition, procedure, or treatment under review.

1 (7) "Clinical review criteria" means the written policies, written screening procedures, decision
2 abstracts, determination rules, clinical and medical protocols, practice guidelines, or any other criteria or
3 rationale used by a health insurance issuer or its designated utilization review organization to determine the
4 medical necessity of health care services.

5 (8) "Concurrent review" means a utilization review conducted during a patient's stay or course of
6 treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care
7 setting.

8 (9) "Cost sharing" means the share of costs that a covered member pays under the health insurance
9 issuer's health plan, including maximum out-of-pocket, deductibles, coinsurance, copayments, or similar
10 charges, but does not include premiums, balance billing amounts for out-of-network providers, or the cost of
11 noncovered services.

12 (10) "Covered benefits" or "benefits" means those health care services to which a covered person is
13 entitled under the terms of a health plan.

14 (11) "Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee,
15 or another individual participating in a health plan.

16 (12) "Discharge planning" means the formal process for determining, prior to discharge from a facility,
17 the coordination and management of the care that a patient receives after discharge from a facility.

18 (13) "Emergency medical condition" has the meaning provided in 33-36-103.

19 (14) "Emergency services" has the meaning provided in 33-36-103.

20 (15) "External review" describes the set of procedures provided for in Title 33, chapter 32, part 4.

21 (16) "Final adverse determination" means an adverse determination involving a covered benefit that
22 has been upheld by a health insurance issuer or its designated utilization review organization at the completion
23 of the health insurance issuer's internal grievance process as provided in Title 33, chapter 32, part 3.

24 (17) "Grievance" means a written complaint or an oral complaint if the complaint involves an urgent
25 care request submitted by or on behalf of a covered person regarding:

26 (a) availability, delivery, or quality of health care services, including a complaint regarding an adverse
27 determination made pursuant to utilization review;

28 (b) claims payment, handling, or reimbursement for health care services; or

1 (c) matters pertaining to the contractual relationship between a covered person and a health
2 insurance issuer.

3 (18) "Health care provider" or "provider" means a person, corporation, facility, or institution licensed by
4 the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

5 (a) a physician, physician assistant, advanced practice registered nurse, health care facility as
6 defined in 50-5-101, osteopath, dentist, nurse, optometrist, chiropractor, podiatrist, physical therapist,
7 psychologist, licensed social worker, speech pathologist, audiologist, licensed addiction counselor, or licensed
8 professional counselor; and

9 (b) an officer, employee, or agent of a person described in subsection (18)(a) acting in the course and
10 scope of employment.

11 (19) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a
12 health condition, illness, injury, or disease, including the provision of pharmaceutical products or services or
13 durable medical equipment.

14 (20) "Health insurance issuer" has the meaning provided in 33-22-140.

15 (21) "Medical necessity" means health care services that a health care provider exercising prudent
16 clinical judgment would provide to a patient for the purpose of preventing, evaluating, diagnosing, treating,
17 curing, or relieving a health condition, illness, injury, or disease or its symptoms and that are:

18 (a) in accordance with generally accepted standards of practice;

19 (b) clinically appropriate in terms of type, frequency, extent, site, and duration and are considered
20 effective for the patient's illness, injury, or disease; and

21 (c) not primarily for the convenience of the patient or health care provider and not more costly than an
22 alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic
23 results as to the diagnosis or treatment of the patient's illness, injury, or disease.

24 (22) "Network" means the group of participating providers providing services to a managed care plan.

25 (23) "Participating provider" means a health care provider who, under a contract with a health
26 insurance issuer or with its contractor or subcontractor, has agreed to provide health care services to covered
27 persons with the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly
28 or indirectly from the health insurance issuer.

1 (24) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint
2 stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this
3 subsection.

4 (25) "Preservice claim" means a request for benefits or payment from a health insurance issuer for
5 health care services that, under the terms of the health insurance issuer's contract of coverage, requires
6 authorization from the health insurance issuer or from the health insurance issuer's designated utilization review
7 organization prior to receiving the services.

8 (26) "Prospective review" means a utilization review conducted of a preservice claim prior to an
9 admission or a course of treatment.

10 (27) (a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that
11 has a retroactive effect.

12 (b) The term does not include a cancellation or discontinuance under a health plan if the cancellation
13 or discontinuance of coverage:

14 (i) has only a prospective effect; or

15 (ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a
16 failure to timely pay required premiums or contributions toward the cost of coverage.

17 (28) (a) "Retrospective review" means a review of medical necessity conducted after services have
18 been provided to a covered person.

19 (b) The term does not include the review of a claim that is limited to an evaluation of reimbursement
20 levels, veracity of documentation, accuracy of coding, or adjudication for payment.

21 (29) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health
22 care provider other than the one originally making a recommendation for a proposed health care service to
23 assess the clinical necessity and appropriateness of the initial proposed health care service.

24 (30) "Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration
25 of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of
26 the individual from a facility.

27 (31) (a) "Urgent care request" means a request for a health care service or course of treatment with
28 respect to which the time periods for making a nonurgent care request determination could:

1 (i) seriously jeopardize the life or health of the covered person or the ability of the covered person to
2 regain maximum function; or

3 (ii) subject the covered person, in the opinion of a health care provider with knowledge of the covered
4 person's medical condition, to severe pain that cannot be adequately managed without the health care service
5 or treatment that is the subject of the request.

6 (b) Except as provided in subsection (31)(c), in determining whether a request is to be treated as an
7 urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a
8 prudent lay person who possesses an average knowledge of health and medicine.

9 (c) Any request that a health care provider with knowledge of the covered person's medical condition
10 determines is an urgent care request within the meaning of subsection (31)(a) must be treated as an urgent
11 care request.

12 (32) "Utilization review" means a set of formal techniques designed to monitor the use of or to evaluate
13 the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures, or settings.
14 Techniques may include ambulatory review, prospective review, second opinions, certification, concurrent
15 review, case management, discharge planning, or retrospective review.

16 (33) "Utilization review organization" means an entity that conducts utilization review for one or more of
17 the following:

18 (a) an employer with employees who are covered under a health benefit plan or health insurance
19 policy;

20 (b) a health insurance issuer providing review for its own health plans or for the health plans of
21 another health insurance issuer;

22 (c) a preferred provider organization or health maintenance organization; and

23 (d) any other individual or entity that provides, offers to provide, or administers hospital, outpatient,
24 medical, or other health benefits to a person treated by a health care provider under a policy, plan, or contract."

25 - END -