MONTANA STATE AUDITOR

JOHN MORRISON
STATE AUDITOR

COMMISSIONER OF INSURANCE
COMMISSIONER OF SECURITIES

ADVISORY MEMORANDUM

TO: Motor Vehicle Liability Insurers

FROM: John Morrison
State Auditor and Commissioner of Insurance

DATE: August 29, 2007

SUBJECT: House Bill 587 (HB 587) – Amending Section 33-23-204, Mont. Code Ann., Limitation of Liability Under Motor Vehicle Liability Policy ("Anti-Stacking Statute")

House Bill 587 (HB 587), which became effective April 17, 2007, amended Section 33-23-203, Montana Code Annotated. That section is titled "Limitation of liability under motor vehicle liability policy" and is commonly known as the "anti-stacking statute."

Prior to the HB 587 amendments, insureds in many circumstances have been able to "stack" (combine in the aggregate) their medical payments coverages, uninsured motorist coverages (UM), and underinsured motorist coverages (UIM) when separate premiums were paid for each coverage for each vehicle.*

The new statute provides that an insurer can avoid stacking "if the premiums charged for the coverage by the insurer actuarially reflect the limiting of coverage separately to the vehicles covered by the policy and the premium rates have been filed with the [C]ommissioner." An insurer seeking to avoid stacking must file new premium rates with an actuarial certification and supporting actuarial documentation demonstrating that the new rates reflect limiting coverage. New policy forms stating that coverage will be limited (not stacked) would also need to be filed separately from the rate filing and approved by the Commissioner.

Specific instructions (including a checklist) for filing new rates intended to avoid stacking are available on the State Auditor's Office website at www.sao.mt.gov under the "bulletins" section. If you have questions regarding this matter, please contact the Insurance Department at 406-444-5220 (Rates) or 406-444-3443 (Forms).

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*For recent and earlier case law, see *State Farm Mutual Automobile Ins. Co. v. Gibson*, 2007 MT 153, 337 Mont. 509 (2007) and *Hardy v. Progressive Specialty Insurance Co.*, 2003 MT 85, 315 Mont. 107, 67 P.2d 892 (2003) (an insured with three vehicles and paying a separate premium for UIM coverage on each vehicle was able to stack the three UIM coverages).

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Instructions For Filing Rates For UI, UM and Med-Pay Coverages

House Bill 587 (effective April 17, 2007) allows insurers to avoid "stacking" (combining in the aggregate) of Uninsured Motorists [UM], Underinsured Motorists [UIM] and Medical Payments [Med-Pay] coverages provided the rates are filed with the Commissioner of Insurance and "reflect the limiting of coverage separately to the vehicles covered." (See 33-23-203, Montana Code Annotated, as amended in 2007.)

Insurers filing rates under the new law must provide the following information, including an actuarial certification and supporting actuarial documents, with their rate filings. This checklist with appropriate answers must be completed by all insurers filing rates for UM, UIM and Med-Pay whether the insurer intends to allow "stacking" or not. [Note that new policy forms stating that coverage will be limited (not stacked) would also need to be filed with the Commissioner separately.]

I. Is this rate filing in connection with UM, UIM or Med-Pay coverages and is "stacking allowed?"

A. Does this submission contain UM, UIM or Med-Pay coverage rates?
___ **Yes** ___ **No** (If the answer is "No," disregard the remainder of this checklist and send the checklist in with "No" marked above only. If the answer is "Yes," continue.)

B. Does the company *allow* the stacking of UM, UIM and Med-Pay limits?
___ **Yes** ___ **No** (If the answer to this question is "Yes," disregard the remainder of this checklist and send in the checklist with a response to these first two inquiries only. If the answer is "No," continue.)

II. Information required for rate filings when "stacking" is not allowed.

A. Provide a complete copy of UM, UIM and Med-Pay premiums and/or rates and a complete copy of the premiums and/or rates that are being replaced.

B. Provide actuarial certification from a qualified actuary* that the premiums charged actuarially reflect the limiting of coverage separately to the vehicles covered by the policy per 33-23-203 (1)(c), MCA (2007).

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C. Provide actuarial supporting documentation, assumptions and work papers as to how the rates and/or premiums are derived.

D. Provide answers to the following questions:

1. Is there a single policy covering all vehicles in a household or business or is there a separate policy covering each vehicle?

   ____**Single** ____**Separate**

2. Does the company charge a single premium for covering all vehicles in a household or business or a separate premium for each vehicle, whether covered in one or separate policies, for UM, UIM and Med-Pay coverage?

   ____**Single** ____**Separate**

3. On a separate piece of paper attached to this form, provide examples of how UM, UIM and Med-Pay premiums would be determined as follows (be sure to specify whether there is one or more policies per household/business, and whether there is a separate premium for each vehicle or one premium covering all vehicles):

   Example 1: One insured, more than one vehicle.
   Example 2: More than one insured, more than one vehicle.

** A qualified actuary is one who has met the current Qualification Standards for Actuaries Issuing Statement of Actuarial Opinion in the United States as approved by the American Academy of Actuaries.*