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## Health insurer's pricing under fire in court

By MIKE DENNISON IR State Bureau May 18, 2011

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A trio of Montana farmers who say Blue Cross Blue Shield of Montana overcharged them for health insurance is asking a federal appeals court to allow state courts to resolve the issue.

The lawsuit, which is before the 9th U.S. Circuit Court of Appeals, has possible repercussions for thousands of businesses that buy “association” insurance plans in Montana.

A farming family from Joplin says they were sold insurance as part of a larger pool of businesses, but that Blue Cross treated them as one “group” and violated state law by raising their rates excessively, based just on their own health status.

Yet Blue Cross, the state's largest health insurer, won the first round of the case last year, when U.S. District Judge Charles Lovell of Helena dismissed the complaint by Fossen Family Farms.

Lovell said federal law on group-health plans supersedes state law, and that under federal law, Blue Cross properly treated Fossen Farms as one group, for pricing purposes.

The Fossens appealed Lovell's ruling to the 9th Circuit Court and filed their final written argument on Monday — and also have some prominent parties arguing for Lovell's ruling to be overturned.

Montana's insurance commissioner, Monica Lindeen, the U.S. secretary of labor and the National Association of Insurance Commissioners (NAIC) have all filed "friend of the court" briefs, saying Montana has the power to regulate the dispute.

NAIC said Congress has reserved power for the states to regulate aspects of health insurance, and that Lovell's ruling "call(s) into question other states' authority to regulate premiums and protect consumers from potential unscrupulous business practices of insurers."

The appeal is asking the 9th Circuit Court to overturn Lovell's ruling and renew the case in state court, which could then decide whether Blue Cross practices are violating state insurance laws.

The lawsuit, filed in late 2009, focuses on regulation and pricing of health insurance sold as part of "association plans," which are sold to groups of related businesses.

The Montana Chamber of Commerce has an association plan that markets health insurance to its members, as do other business groups in Montana. About 40,000 people employed by small businesses are covered by association health plans.

Yet while the plans are marketed as group health policies, Blue Cross, which underwrites most of the policies, is pricing each member's policy as though they are individual businesses, the lawsuit said.

John Morrison, a former Montana insurance commissioner and an attorney for the Fossens, said Tuesday that Blue Cross is evading state law that requires group policies to treat all members equally and keep increases within certain limits.

"Montana's laws prohibit group health plans from charging excessive premiums to employers on the basis of health status," he said. "In these association plans, the health insurance companies are dodging the law, raising rates through the roof for many employers, and cherry-picking to get younger, healthier customers. We hope this case will bring that to an end."

The Fossens said Blue Cross misled them into thinking they would be “rated” or priced as part of a larger group, but instead raised their rates by 21 percent in 2006, based on their family’s health costs.

Blue Cross, which reduced that increase for one year after the Fossens protested, says Lovell ruled correctly when he stated that federal law on health plans takes precedence — and that Blue Cross is properly treating the Fossens as one “group” when determining its insurance rates.

Blue Cross lawyers said federal law allows an employer group health plan to charge higher premiums because of the “health status” of employees in the group — as long as the increase is borne equally by all members in the health plan.

The Fossens are one employer, and therefore an increase can be applied to them based on their health status, Blue Cross argued.