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8 **MONTANA FIRST JUDICIAL DISTRICT COURT**
9 **LEWIS AND CLARK COUNTY**

10 HEALTH CARE SERVICE
11 CORPORATION, a mutual legal reserve
12 company doing business in Montana as
13 BLUE CROSS BLUE SHIELD OF
14 MONTANA,

15 Plaintiff,

16 v.

17 STATE OF MONTANA ex rel. JAMES
18 BROWN, MONTANA STATE
19 AUDITOR AND *EX OFFICIO*
20 COMMISSIONER OF SECURITIES
AND INSURANCE,

21 Defendant.

22 Cause No.: DDV-2026-45

23
24 **ORDER ON MOTION FOR**
TEMPORARY RESTRAINING
ORDER AND ORDER SETTING
HEARING

25 Plaintiff Health Care Service Corporation, doing business as Blue
Cross Blue Shield of Montana (“BCBSMT”), moves for a preliminary injunction

1 and temporary restraining order barring the Commissioner of Securities and
2 Insurance (CSI or “the Commissioner”) from bringing an administrative action
3 against BCBSMT for alleged non-compliance with Mont. Code Ann.

4 § 33-19-321, which requires notice to consumers of certain computer security
5 breaches. A hearing is scheduled to take place in two days, on January 22, 2026.
6 BCBSMT represents that it provided notice to the Commissioner of its motion.
7 (Br. in Support of Mot. for Temporary Restraining Or., Dkt. 6 at 11.) For the
8 reasons that follow, the motion for a temporary restraining order (TRO) will be
9 denied, but the Court will set a hearing on the motion for a preliminary
10 injunction.

11 A temporary restraining order is governed by the same elements
12 that are necessary to establish a preliminary injunction:

13 (a) the applicant is likely to succeed on the merits;
14 (b) the applicant is likely to suffer irreparable harm in the absence of
15 preliminary relief;
16 (c) the balance of equities tips in the applicant's favor; and
17 (d) the order is in the public interest.

18 Mont. Code Ann. § 27-19-201(1)(a). Unlike a preliminary injunction, which
19 typically lasts until a final determination on the merits, a temporary restraining
20 order is entered for a much shorter duration, just long enough to hear the
21 preliminary injunction request. The Court considers each factor in turn.

22 **1. Likelihood of success on the merits**

23 BCBSMT contends that the Commissioner has set an evidentiary
24 hearing for January 22, 2026, to investigate whether BCBSMT violated Mont.
25 Code Ann. § 33-19-321 in connection with the “cybersecurity event involving
Conduent Business Services LLC that BCBSMT reported to CSI in October

1 2025.” (Verified Comp. Ex. A, Dkt. 1 at 12.) According to BCBSMT, Conduent
2 notified BCBSMT in January 2025 of a cybersecurity breach, but did not provide
3 any information about whether the breach impacted BCBSMT or its insureds.
4 (Verified Comp. ¶ 18, Dkt. 1 at 3–4.) Conduent notified BCBSMT for the first
5 time on July 1, 2025, that the breach might have involved data associated with
6 BCBSMT’s parent company, and Conduent completed an analysis on
7 September 23, 2025, that showed affected data included BCBSMT insureds.
8 BCBSMT reported this to CSI “[a]s a courtesy” on October 8, 2025.

9 HIPAA-covered entities like BCBSMT have historically been
10 exempt from complying with Montana’s Insurance Information and Privacy
11 Protection Act (“IPPA”). In 2025, the legislature enacted House Bill 60, which
12 would nevertheless require exempt insurers from disclosing cybersecurity
13 breaches. 2025 Mont. Laws 8, § 16. Most of HB 60, including the relevant
14 changes here, took effect on October 1, 2025. *Id.* § 37(1). House Bill 60 does not
15 contain a retroactivity clause. BCBSMT contends that the Commissioner is
16 improperly attempting to apply HB 60 retroactively to the Conduent
17 cybersecurity incident. *See* Mont. Code Ann. §§ 33-19-105(5) (2025), 33-19-321.

18 Laws are presumed not to be retroactive. Mont. Code Ann.
19 § 1-2-109. A law is applied retroactively if it “takes away or impairs vested
20 rights, acquired under existing laws, or creates a new obligation, imposes a new
21 duty or attaches a new disability, in respect to transactions already past.” *Thrivent*
22 *Fin. for Lutherans v. Andronescu*, 2013 MT 13, ¶ 11, 368 Mont. 256, 300 P.3d
23 117 (quoting *Allen v. Atl. Richfield Co.*, 2005 MT 281, ¶ 16, 329 Mont. 230,
24 124 P.3d 132). A statute is not applied retroactively, however, “merely because it
25 is applied in a case arising from conduct antedating the statute’s enactment.”

1 *Thrivent Fin.*, ¶ 11 (quoting *Porter v. Galarneau*, 275 Mont. 174, 183, 911 P.2d
2 1143, 1150 (1996)).

3 BCBSMT's reasoning proceeds as follows: prior to October 1,
4 2025, BCBSMT had no duty to comply with the disclosure requirements of
5 Mont. Code Ann. § 33-19-321 in the event of a cybersecurity breach. Therefore,
6 when it learned of the Conduent event, it was not required to do any disclosure.
7 By applying House Bill 60 to a breach that occurred before House Bill 60 was in
8 effect, BCBSMT argues, it created an obligation to disclose that breach that did
9 not exist before.

10 This, however, is not the only way to look at it. One could argue
11 that because disclosure is an ongoing requirement, a requirement that starting
12 October 1, 2025, BCBSMT must disclose all cybersecurity events of which it is
13 aware is not retroactive, but prospective. The mere fact that the breach that must
14 now be disclosed arose in the past does not mean BCBSMT does not have any
15 affirmative forward-looking obligation to disclose things that, as of October 1,
16 2025, it had not yet disclosed. Under this view, provided CSI is not purporting to
17 penalize BCBSMT for any failure to disclose prior to October 1, 2025, and only
18 for an ongoing failure to comply with § 33-19-321 arising after that date, there
19 would not be a retroactive application.

20 Nevertheless, application of the statute to require new disclosure of
21 old breaches creates some questions, namely: how far back must CSI disclose?
22 Must it search back to every cybersecurity event since 2014 and inform its
23 insureds of long-stale breaches? If not, what is the limiting principle? Because a
24 reading of the statute that requires disclosure of all breaches starting October 1,
25 2025, regardless of when they happened, would seem to impose a substantial

1 burden on BCBSMT with respect to long-ago transactions, that would support a
2 conclusion that the statute is retroactive. These are some of the issues the
3 Commissioner will need to address, depending on their theory of retroactivity.

4 Ultimately, because some of the foregoing questions are
5 unanswered to date, the Court is persuaded that BCBSMT has demonstrated a
6 *prima facie* likelihood of success on the merits. *See Stephenson v. Lone Peak*
7 *Preserve, LLC*, 2025 MT 148, ¶ 24, 423 Mont. 46, 571 P.3d 1042 (“To show a
8 likelihood of success on the merits. . . the applicant ‘must present a *prima facie*
9 case but need not show a certainty of winning.’” (quoting *Cross v. State*,
10 2024 MT 303, ¶ 33, 419 Mont. 290, 560 P.3d 637)).

11 **2. Likelihood of suffering irreparable injury**

12 BCBSMT contends that it faces irreparable injury by being
13 subjected to an evidentiary hearing. The Court is not persuaded.

14 For instance, if the Commissioner were to wrongfully find that
15 BCBSMT violated § 33-19-321 and assess penalties or fines, BCBSMT could
16 remedy that through a petition for judicial review after exhausting administrative
17 remedies. To be sure, there is a cost to defending the hearing and resorting to
18 appeals, but financial injury is ordinarily not irreparable because it can be
19 remediated through *post hoc* remuneration. *See Cross*, ¶ 47.

20 The Court is likewise not convinced that being subjected to an
21 administrative hearing, public or otherwise, is a form of irreparable harm merely
22 because there is a contention that BCBSMT has done nothing wrong and the
23 Commissioner is not entitled to assess any penalties or seek other measures
24 against BCBSMT. This is the essence of every contested hearing—one side
25 contends they are entitled to relief; the other contends they are not—and the point

1 of the hearing is to determine *whether* BCBSMT has violated statute; an adverse
2 finding to BCBSMT is not a *fait accompli*. It is not clear whether BCBSMT has
3 attempted to assert its complaints about the timing of the hearing and the lack of
4 opportunity to conduct discovery to the hearing examiner. Ordinarily, however,
5 that would be the proper forum to first raise these complaints, and BCBSMT
6 cannot show a likelihood of irreparable injury without showing that its objections
7 cannot be fairly heard in that forum. They have not done so.

8 In short, BCBSMT has not convinced the Court it is likely to suffer
9 irreparable injury in the absence of an injunction.

10 **3. Balance of the Equities and Public Interest**

11 In an application for a preliminary injunction brought against the
12 State in its sovereign capacity, the equities and public interest factors merge.
13 *Cross*, ¶ 53.

14 BCBSMT contends the equities tip in its favor. The purpose of a
15 preliminary injunction “is to preserve the status quo and minimize harm to all
16 parties pending full trial or resolution on the merits.” *Stephenson*, ¶ 14 (quoting
17 *Flying T Ranch, LLC v. Catlin Ranch, LP [Flying T Ranch II]*, 2022 MT 162,
18 ¶ 33, 409 Mont. 478, 515 P.3d 806). The status quo does favor an injunction,
19 because the Commissioner’s notice marks the departure from the status quo.
20 Moreover, as BCBSMT notes, failure to issue an injunction will cause harm to
21 it—whether “irreparable” or not—in the form of the large financial costs
22 associated with putting together a defense in short order.

23 At the same time, the Court does not agree that an injunction
24 would not itself create harm. First, a preliminary injunction would essentially
25 arrest the administrative proceedings before the Commissioner and interfere with

1 the internal workings of the executive branch, and it would do so *ex ante* rather
2 than waiting for the administrative process to play out. Second, data breach
3 disclosure questions have a serious impact on consumers of insurance. It is
4 unclear what has been done to notify BCBSMT members of the Conduent breach
5 on this record, but time is of the essence to allow consumers to appropriately
6 protect themselves from any effects of a data breach.

7 On the limited record now before it, the Court cannot say whether
8 these concerns outweigh the burden. BCBSMT may well be able to convince the
9 Court that these concerns do not outweigh the harm to it from continuing to
10 proceed before the agency in this matter. But while the more fulsome showing
11 associated with a full preliminary injunction hearing and briefing may persuade
12 the Court otherwise, at this juncture the Court lacks sufficient information to
13 conclude that the balance of equities tips in BCBSMT's favor and that a
14 preliminary injunction is in the public interest.

15 **4. Conclusion**

16 To obtain a temporary restraining order, all four factors must be
17 met. Mont. Code Ann. § 27-19-201(1); *Cross*, ¶ 19. Because BCBSMT's
18 application does not persuade the Court that it is likely to suffer irreparable
19 injury, that the balance of the equities tips in its favor, and that an injunction is in
20 the public interest, the application for a temporary restraining order must fail.

21 The Court emphasizes that the foregoing is based on the very
22 limited record before it. At a hearing or with further briefing, BCBSMT may yet
23 convince the Court a preliminary injunction is appropriate. Moreover, BCBSMT
24 is entitled to a hearing on the preliminary injunction. *Flying T Ranch, LLC v.*
25 *Catlin Ranch, LP [Flying T Ranch I]*, 2020 MT 99, ¶ 15, 400 Mont. 1,

1 462 P.3d 218. The Court will endeavor to set the hearing promptly to settle this
2 matter as quickly as possible.

3 Accordingly,

4 **IT IS ORDERED:**

5 1. BCBSMT's application for a temporary restraining order
6 (Dkt. 5), filed January 16, 2026, is **DENIED**.

7 2. A hearing on the motion for a preliminary injunction is set
8 for **January 28, 2026, at 1:30 p.m. Two hours** are reserved for hearing, to be
9 divided equally among adverse parties. If any party believes more time is
10 necessary or intends to call witnesses at the hearing, that party shall promptly
11 inform the Court in writing.

12 3. BCBSMT shall promptly serve a copy of this Order on the
13 Commissioner.

14 DATED this 20th day of January 2026.

15
16 /s/ Christopher D. Abbott
17 CHRISTOPHER D. ABBOTT
18 District Court Judge

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21
22 cc: Daniel J. Auerbach, via email
23 Christy S. McCann, via email
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25 CDA/tt/DDV-2026-45 Health Care Service Corporation v. State et al. – Order on Motion for Temporary Restraining Order and Order Setting
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