




COMMISSIONER OF SECURITIES AND INSURANCE

James Brown
Commissioner

Office of the
Montana State Auditor

ADVISORY MEMORANDUM

To: HEALTH INSURANCE COMPANIES OPERATING IN MONTANA

From: JAMES BROWN 
Commissioner of Securities and Insurance, Office of the Montana State Auditor

Date: November 6, 2025

Advisory Memorandum Regarding Unfair Trade Practices in Marketing Insurance Products to Montanans Eligible for Medicare

Purpose

The purpose of this Advisory Memorandum is to clarify the Montana Commissioner of Securities and Insurance's (CSI) perspective on unfair trade practices that lead to manipulation of the health insurance market and withholding or denying access to products from Medicare-eligible consumers in Montana. Montana Code Annotated (MCA) §§ 33-18-101 and 33-18-102 prohibits any method of competition or act in the business of insurance that is unfair or deceptive, including but not limited to those enumerated in §§ 33-18-201 through 33-18-209, MCA. Further, § 33-18-1003, MCA allows the Commissioner to address a method of competition or in any act or practice in the conduct of the business of insurance that is not explicitly defined in the Code, but the Commissioner finds to be unfair or deceptive.

Applicable Law

This Advisory Memorandum applies to all carriers and producers offering any health insurance plans to Montanans eligible for Medicare, including Medicare Advantage plans.

The CSI has received reports that certain insurance carriers offering Medicare Advantage plans have attempted to restrict access by:

- Removing the enrollment application from their website,
- Discouraging agents from selling their products,
- Changing or discontinuing producer compensation during the plan year.

840 Helena Avenue, Helena, Montana 59601
(main fax) 406.444.3413 | (securities fax) 406.444.5558
(insurance consumer services fax) 406.444.1980 | (legal fax) 406.444.3499
(phone) 800.332.6148 or 406.444.2040 | (email) csi@mt.gov | (web) www.csimt.gov

Such practices appear to be unfair trade practices under Montana law. It is inappropriate and unfair—and potentially harmful to Montana consumers—when carriers restrict access to products filed and approved for marketing in Montana or discourage independent agent sales for these products.

Carriers must:

- Make available and easily accessible all applications for enrollment, both in printed form and online, as well as via their appointed agents.
- Not encourage, suggest, or instruct that their products not be sold, marketed, or that enrollment should be discouraged.
- Not change producer compensation or commissions mid-year.
- Pay compensation or commissions if the product's rate development included such compensation, unless the plan was filed with an explicit statement that it would be “zero commission.”

Refusing to pay commissions on insurance products can disincentivize producers, reducing consumer access to necessary coverage. This is especially concerning when the carrier:

- Has appointed independent agents,
- Has historically paid commissions for the products,
- Included commissions in product rate development,
- Did not expressly designate the plan as “zero commission only” before filing.

Guidance

All carriers and producers operating in Montana who offer insurance products to Medicare-eligible residents must act in good faith. Filed products approved for sale must be accessible and marketed without artificial barriers or disincentives. When plans were developed with commission built into rates, producers should be compensated accordingly; only products expressly filed as “zero commission” may be exempt. Carriers are strongly cautioned against engaging in any artificial market manipulations that may harm Montana’s Medicare consumers.

All producers have an ethical and statutory duty to prioritize the consumer’s best interests by assisting in the selection of plans best suited to the consumer’s needs, including prescription coverage, provider access, overall cost, and affordability.

The Commissioner’s office will closely monitor compliance and may take enforcement action against any carrier or producer engaging in practices that manipulate the market or harm consumers.

This Advisory Memorandum serves as an agency interpretation of existing law. Requests for further information may be directed to the Market Conduct Bureau Chief at 406-444-2040 or via csi.marketconduct@mt.gov.

This advisory memorandum does not enlarge, delimit, or otherwise modify any requirements of applicable law or in any way limit the authority of CSI under applicable law. CSI encourages interested persons to consult with independent legal counsel for guidance on the application of law to any particular circumstances.