

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

TO: All Insurance Carriers

FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

DATE: January 29, 2014

INSURER BILLING AND PRACTICE GUIDELINES FOR APPOINTED COUNSEL FOR INSURED

The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), has the duty to protect the interests of insurance consumers (insureds). Mont. Code Ann. § 33-1-311(3). The CSI may investigate, examine, or bring action against insurers for violations of Montana law, including, but not limited to, misrepresentations of insurance policies and other unfair or deceptive practices in the insurance business. §§ 33-1-315, 33-1-401, 33-18-102(1), 33-18-201, 33-18-202, and 33-18-1003.

To that end, the CSI considers the following practices to be unfair or deceptive under Montana law:

1. Any insurer billing or practice rule, guideline, or agreement which requires an insured's appointed counsel to obtain approval from the insurer before performing a particular legal task or incurring a legal cost.
2. Any insurer billing or practice rule, guideline, or agreement which contains a blanket refusal or limitation of payment by the insurer for legal services by an insured's appointed counsel if such refusal or limitation interferes with the independent judgment of the insured's appointed counsel.

3. Any insurer billing or practice rule, guideline, or agreement which requires the disclosure of confidential client information to third parties (including, but not limited to, third-party billing auditors).
4. Any insurer billing or practice rule, guideline, or agreement which requires the insured's appointed counsel to seek the insured's consent to divulge confidential client information to any third party (including, but not limited to, third-party billing auditors) on behalf of the insurer.

When any of the practices identified above are included in or referenced by insurance policies, or other forms given to insureds, they will be denied by the CSI. § 33-1-501, 33-15-304. Additionally, the CSI may initiate an action to enjoin any of those practices identified above. §§ 33-18-1003 and 33-18-1004. The CSI may also seek fines or civil penalties for such practices. §§ 33-1-317 and 33-18-1005.

For any questions regarding this advisory memorandum, contact the CSI Legal Bureau at (406) 444-2040.