

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

To: Healthcare Providers and Concerned Parties

From: Matthew M. Rosendale Sr., Commissioner of Securities and Insurance
Office of the Montana State Auditor

Date: December 4, 2017

Matthew M. Rosendale Sr. 12-4-2017

DIRECT PRIMARY CARE AGREEMENTS

Direct primary care agreements are fee for service contracts between healthcare providers and patients, and are meant to cover preventative, routine, or preliminary office visits only. A "direct primary care agreement," as defined by the direct primary care industry,¹ must meet the following criteria:

1. The provider charges a periodic fee under the agreement;
2. The provider does not bill any third parties on a fee-for-service basis, for services covered by the agreement; and
3. Any visit fee charged by the provider must be less than the monthly equivalent of the periodic fee.

After review of applicable Montana law, including Mont. Code Ann. § 33-1-201, *Ogden v. Montana Power Co.*, 229 Mont. 387 (1987), and *Shattuck v. Kalispell Regional Med. Ctr.*, 2011 MT 229, the Commissioner has determined that healthcare providers are not in the business of insurance. In addition, written agreements which meet these specific criteria and clearly outline the primary care services provided under the agreement are not insurance products regulated by the CSI, because there is no risk sharing or indemnification involved.

Please note that any variation from this direct primary care definition may involve indemnification of a party, or the transfer or pooling of risk, which may make the agreement fall under the regulation of this agency. In addition, providers entering into

¹ See, e.g., the Direct Primary Care Coalition (<https://www.dpcare.org/dpcc-model-legislation>) or DPC Frontier (<http://www.dpcfrontier.com/defined/>).

agreements for more comprehensive coverage may be regulated by the CSI as “health maintenance organizations” under MCA § 33-31-102.

Healthcare providers or others who are considering such direct primary care agreements should contact this agency for a determination of whether a specific agreement does, or does not, constitute “insurance” under Montana law. To avoid consumer confusion, the CSI also recommends that providers include language stating that direct primary care agreements are not insurance, and are not meant to replace health insurance coverage.