

NAIC MODEL RULES GOVERNING ADVERTISING 30.001 Tw (66)/c -0.00. Mo Tw 66 (VE) o1ommi25

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Preamble

The proper expansion of Medicare supplement insurance coverage advertising can broaden the distribution of insurance among those who can increase the awareness of beneficial forms of coverage and thereby encourage the insurance-buying public with the means by which to compete with competing forms of coverage.

Insurance advertising has become increasingly important in the years since the Advertisement of Accident and Sickness Insurance were developed. The increase in group insurance plans and the advent of governmental benefit programs have made it necessary for the insurance-buying public to make informed choices. The need for detailed information about insurance products is reflected in the requirements of the 1972 NAIC Rules (as amended) Governing Advertisements of Accident and Sickness Insurance. Detailed disclosure is especially critical in helping to assure that individuals receive truthful advertising for Medicare supplement insurance. The NAIC has, through the 1972 NAIC Rules (as amended) Governing Advertisements of Accident and Sickness Insurance, established a framework for Medicare supplement insurance advertising. These new Rules and Interpretive Guidelines for Medicare supplement insurance advertising are needed to replace the previous rules with respect to Medicare supplement insurance advertising.

Although modern insurance advertising patterns much of its design to attract attention to insurance services, the uniqueness of insurance as a product must always be kept in mind. This is particularly true with respect to Medicare supplement insurance advertising. It is essential that a particular insurance product is unsuitable for his or her needs.

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- (b) Descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker or solicitor for presentation to members of the insurance buying public; including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters and lead generating devices of all kinds as defined in this rule; and
 - (c) Prepared sales talks, presentations and material for use by agents, brokers, producers and solicitors, whether prepared by the insurer or the agent, broker, producer or solicitor
- (2) The definition of “advertisement” includes advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements
- (3) The definition of “advertisement” does not include:
- (a) Material to be used solely for the training and education of an insurer’s employees, agents or brokers;
 - (b) Material used inhouse by insurers;
 - (c) Communications within an insurer’s own organization not intended for dissemination to the public;
 - (d) Individual communications of a personal nature with current policyholders other than material urging the policyholders to increase or expand coverages;
 - (e) Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;
 - (f) Court approved material ordered by a court to be disseminated to policyholders; or
 - (g) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged; provided, the announcement must clearly indicate that it is preliminary to the issuance of a booklet
- B. “Medicare supplement insurance” means a group or individual policy of accident and sickness
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Section 4 Method of Disclosure of Required Information

All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous manner or fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 5 Form and Content of Advertisements

- A. The format and content of a Medicare supplement insurance advertisement shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the commissioner of insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
- B. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases whose meanings are clear only by implication or by the consumer's familiarity with insurance terminology shall not be used.
- C. An insurer must clearly identify its Medicare supplement insurance policy as an insurance policy. A policy trade name must be followed by the words "Insurance Policy" or similar words clearly identifying the fact that an insurance policy or health benefits product (in the case of health maintenance organizations, prepaid health plans and other direct service organizations) is being offered.
- D. No insurer, agent, broker, producer, solicitor or other person shall solicit a resident of this state for the purchase of Medicare supplement insurance in connection with or as the result of the use of any advertisement by such person or any other person, where the advertisement:
 - (1) Contains any misleading representations or misrepresentations, or is otherwise untrue, deceptive or misleading with regard to the information imparted, the status, character or representative capacity of such person or the true purpose of the advertisement; or
 - (2) Otherwise violates the provisions of these rules
- E. No insurer, agent, broker, solicitor or other person shall solicit residents of this state for the purchase of Medicare supplement insurance through the use of a true or fictitious name that is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the person or the true purpose of the advertisement.

Section 6 Advertisements of Benefits, Losses Covered or Premiums Payable

- A. Deceptive Words, Phrases or Illustrations Prohibited

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C. Preexisting Conditions

- (1) An advertisement that is an invitation to contract shall, in negative terms, disclose the extent to which any loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" without an appropriate definition or description shall not be used.
- (2) When a Medicare supplement insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim under the policy. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required.
- (3)

- F. When a testimonial refers to benefits received under a Medicare supplement insurance policy, the specific claim data, including claim number, date of loss, and other pertinent information shall be retained by the insurer for inspection for a period of four (4) years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time. The use of testimonials that do not correctly reflect the present practices of the insurer or that are not applicable to the policy or benefit being advertised is not permissible

Section 9 Use of Statistics

- A. An advertisement relating to (e)-1.58(b)T8037 Tw 2.448 0 Td [(A)-1.2 (n)-0.6 (a)-2.9 (d)-0.6 ((d is (

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- E No advertisement in the form of envelopes or stationary of any kind may use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy

Section 14 Introductory, Initial or Special Offers

- A. (1) An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact

Drafting Note: Some states prohibit a reduced initial premium.

- (13) Advertisements for policies whose premiums are modest because of their limited amount of benefits shall not describe premiums as “low,” “lowest,” “budget” or use qualifying words of similar import. This rule also prohibits the use of words such as “only” and “just” in conjunction with statements of premium amounts when used to imply a bargain.
- (14) An advertisement that exaggerates the effects of statutorily mandated benefits or required policy provisions or that implies that these provisions are unique to the advertised policy is unacceptable. For example, the phrase, “Money Back Guarantee,” is an exaggerated description of the thirty-day right to examine the policy and is not acceptable.
- (15) An advertisement that implies that a common type of policy or a combination of common benefits is “new,” “unique,” “a bonus,” “a breakthrough,” or is otherwise unusual is unacceptable. Also, the addition of a novel method of premium payment to an otherwise common plan of insurance does not render it “new.”
- (16) An advertisement may not omit the word “covered” when referring to benefits payable under its policy. Continued reference to “covered” is not necessary where this fact has been prominently disclosed in the advertisement.
- (17) An advertisement must state that benefits payable under the policy are based upon Medicare eligible expenses, if such is the case.
- (18) An advertisement that fails to disclose that the definition of “hospital” does not include a nursing home, convalescent home or extended care facility, as the case may be, is unacceptable.
- (19) A television, radio, mail or newspaper advertisement, or lead generating device that is designed to produce leads either by use of a coupon, a request to write or to call the company, or a subsequent advertisement prior to contact must include information disclosing that an insurance agent may contact the applicant if such is the fact.
- (20) Advertisements for policies designed to supplement Medicare shall not employ devices that are designed to create undue anxiety in the minds of the elderly. Such phrases as “here is where most people over sixty-five learn about the gaps in Medicare,” or “Medicare is great, but...” or which otherwise exaggerate the gaps in Medicare coverage are unacceptable. Phrases or devices that unduly excite fear of dependence upon relatives or charity are unacceptable. Phrases or devices that imply that long sicknesses or hospital stays are common among the elderly are unacceptable.
- (21) An advertisement that is an invitation to contract implying that the coverage is supplemental to Medicare, if it does not explain the manner in which it is supplemental to Medicare coverage, is not acceptable.
- (22) An advertisement that is an invitation to contract for Medicare supplement insurance is unacceptable if the advertisement:
 - (a) Fails to disclose in clear language which of the Medicare benefits the policy is not

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- (b) Describes the in-patient hospital coverage of Medicare as “Medicare hospital,” or “Medicare Part A” when the policy does not supplement the hospital or the psychiatric hospital benefits of Medicare Part A;
 - (c) Fails to describe clearly the operation of the part or parts of Medicare that the policy is designed to supplement; or
 - (d) Describes those Medicare benefits not supplemented by the policy in such a way as to minimize their importance relative to the Medicare benefits that are supplemented
- (23) Advertisements that indicate that a particular coverage or policy is exclusively for “preferred risks” or a particular segment of the population, or that particular segments of the population are acceptable risks, when such distinctions are not maintained in the issuance of policies, are not acceptable
- (24) An advertisement that contains statements such as “anyone can apply,” or “anyone can join,” other than with respect to a guaranteed issue policy for which administrative procedures exist to assure that the policy is issued within a reasonable period of time after the application is received by the insurer, is unacceptable
- (25) An advertisement that uses a phrase or term such as “here is all you do to apply,” “simply,” or “merely” to refer to the act of applying for a policy that in not a guaranteed issue policy is unacceptable unless it refers to the fact that the application is subject to acceptance or approval by the insurer
- (26) Advertisements that state or imply that premiums will not be changed in the future are not acceptable unless the advertised policies so provide
- (27) An advertisement that does not require the premium to accompany the application must not overemphasize that fact and must make the effective date of that coverage clear
- (28) An advertisement that is an invitation to contract that fails to disclose the amount of any deductible or the percentage of any insurance factor is not acceptable.

Guideline 6A(2)

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Guideline 9A

An advertisement shall specifically identify the Medicare supplement insurance policy to which statistics relate and, where statistics are given that are applicable to a different policy, it must be stated clearly that the data does not relate to the policy being advertised.

An advertisement that states the dollar amount of claims paid must also indicate the period over which the claims have been paid.

If the term "loss ratio" is used, it shall be properly explained in the context of the advertisement and, unless the state has issued a regulation otherwise defining the term, it shall be calculated on the basis of premiums earned to losses incurred and shall not be on a yearly or basis

Guideline 9C

The rule does not require that statistics for this state be used since such statistics as hospital charges and average stays may vary from state to state. When nationwide statistics are used, that fact should be noted, unless the statistics on the particular point are substantially the same in a state to which the advertisement is directed. Statistics may only be used if they are current and credible

Guideline 10

The rule prohibits disparaging, unfair or incomplete comparisons of policies or benefits that would have a tendency to decline or mislead the public. The rule does not preclude the use of comparisons by health

Guideline 14A(1)

The rule prohibits advertising representing that a product is offered on an introductory, initial or special offer basis or otherwise which (a) will not be available later; or (b) is available only to certain individuals, unless such is the fact. This rule prohibits the repetitive use of such advertisements where an insurer uses enrollment periods as the usual method of advertising these policies, the rule prohibits describing an enrollment period as a special opportunity or offer for the applicant.

Guideline 14A(2)

The rule restricts the repetitive use of enrollment periods. The requirement of reasonable closing dates and waiting periods between enrollment periods was adopted to eliminate the abuses that formerly existed. This rule does not limit just the use of enrollment periods; it requires that a particular insurance product offered in an enrollment period through any advertising media, including the prepared presentations of agents, cannot be offered again in the state until [insert number] months from the close of the enrollment period. Thus, an insurer must choose whether to use enrollment periods or open enrollment for a product. 10.0.8ru6 (o)-4 (d)-Tc147 (o)-4628

