APPENDIX

INTERPRETIVE GUIDELINES FOR 23 CAR pt. 82
ADVERTISEMENTS OF DISABILITY INSURANCE

Guideline 23 CAR § 82-102(a).

23 CAR § 82-102(a) applies to any "advertisement" as that term is defined in 23 CAR § 82-103(1), (7), (9), and (10) unless otherwise specified in this rule. This rule applies to all disability insurance (except Medicare supplement insurance), including but not limited to group, blanket, and individual disability insurance. Certain distinctions, however, are applicable to these categories. Among them is the level of conversance with insurance, a factor which is covered by 23 CAR § 82-105(a) of this rule.

Guideline 23 CAR § 82-103(1).

The scope of the term "advertisement" extends to the use of all media for communications to the general public, to the use of all media for communications to specific members of the general public, and to the use of all media for communications by insurers, agents, brokers and solicitors.

Guideline 23 CAR § 82-103(14).

In 23 CAR § 82-103(14), the language "except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts" means except disability, waiver of premium and double indemnity benefits included in life insurance, endowment or annuity contracts or contracts supplemental thereto which contain only such provisions which: (1) provide additional benefits in case of death or dismemberment or loss of sight by accident or as (2) operate to safeguard such contracts against lapse, or to give a special surrender value, or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled as defined by the contract or supplemental contract.

Guideline 23 CAR § 82-103(10).

1. A "brief description of coverage" in an invitation to inquire must be limited to a brief description of the loss for which benefits are payable but may contain:

(a) The dollar amount of benefits payable; and/or

(b) The period of time during which benefits are payable.

2. An invitation to inquire may not refer to cost.

3. As with all disability insurance advertisements, an invitation to inquire must not:

(a) Employ devices which are designed to create undue anxiety;

(b) Exaggerate the value of the benefits available under the advertised policy; or

(c) otherwise violate the provisions of this rule.

Guideline 23 CAR § 82-104.

23 CAR § 82-104 permits the use of either of the following methods of disclosure:

1. The first method provides for the disclosure of exceptions, limitations, reductions and other restrictions conspicuously and in close conjunction with the statements to which such information relates. This may be accomplished by disclosure in the description of the related benefits or in a paragraph set out in close conjunction with the description of policy benefits.

2. The second method provides for the disclosure of exceptions, limitations, reductions and other restrictions not in conjunction with the provisions describing policy benefits but under appropriate captions of such prominence that the information shall not be minimized, rendered obscure or otherwise made to appear unimportant. The phrase "under appropriate captions" means that the title must be accurately descriptive of the captioned material. Appropriate captions include the following: "Exceptions", "Exclusions", "Conditions Not Covered", and "Exceptions and Reductions". The use of captions such as, or similar to, the following are not acceptable because they do not provide adequate notice of the significance of the material: "Extent of Coverage", "Only these Exclusions'.', or "Minimum Limitations".

In considering whether an advertisement complies with the disclosure requirements of this rule, the rule must be applied in conjunction with the form and content standards contained in 23 CAR § 82-105.

Guideline 23 CAR § 82-105(a).

23 CAR § 82-105(a) must be applied in conjunction with 23 CAR §§ 82-101 and 82-104. This section refers specifically to "format and content" of the advertisement and the "overall" impression created by the advertisement. This involves factors such as, but not limited to, the size, color and prominence of type used to describe benefits. The word "format" means the arrangement of the text and the captions.

This section requires distinctly different advertisements for publication in newspapers or magazines of general circulation as compared to scholarly, technical or business journals and newspapers. Where an advertisement consists of more than one (1) piece of material, each piece of material must, independent of all other pieces of material, conform to the disclosure requirements of the rule.

Guideline 23 CAR § 82-105(b).

23 CAR § 82-105(b) prohibits the use of incomplete statements and words or phrases which have the tendency or capacity to mislead or deceive because of the reader's unfamiliarity with insurance terminology. Therefore, words, phrases and illustrations used in an advertisement must be clear and unambiguous and, if the advertisement uses insurance terminology, sufficient description of a word, phrase or illustration shall be provided by definition or description in the context of the advertisement. As implied in Guideline 23 CAR § 82-105(a), distinctly different levels of comprehension of the subscribers of various publications should be anticipated.

Guideline 23 CAR § 82-106(a)(1).

The following examples are illustrations of the prohibitions created by 23 CAR § 82-106(a)(1):

1. An advertisement which describes any benefits that vary by age must disclose that fact.

2. An advertisement which uses a phrase such as "no age limit", if benefits or premiums vary by age or if age is an underwriting factor, must disclose that fact.

3. Advertisements, applications, requests for additional information and similar materials are unacceptable if they state or imply that the recipient has been individually selected to be offered insurance or has had his eligibility for such insurance individually determined in advance when the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.

4. Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population, or that a particular segment of the population are acceptable risks, when such distinctions are not maintained in the issuance of policies, are not acceptable.

5. Advertisements for group or franchise group plans which provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless such is the fact.

6. It is unacceptable to use terms such as "enroll" or "join" to imply group or blanket insurance coverage when such is not the fact.

7. Any advertisement which 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.

8. An advertisement which states or implies immediate coverage of a policy is unacceptable unless suitable administrative procedures exist so that the policy is issued within fifteen (15) working days after the application is received by the insurer.

9. Any advertisement which contains statements such as "here is all you do to apply", "simply" or "merely" to refer to the act of applying for a policy which is 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.

10. Applications, request forms for additional information and similar related materials are unacceptable if they resemble paper currency, bonds, stock certificates, etc.; or use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy advertised is connected with a government agency, such as the Social Security Administration or the Department of Health and Human Services.

11. No advertisement shall employ devices which are designed to create undue fear or anxiety in the minds of those to whom they are directed. Unacceptable examples of such devices are:

(a) The use of phrases such as "cancer kills somebody every two minutes" and "total number of accidents" without reference to the total population from which such statistics are drawn. (As an example of a permissible device, data prepared by the American Cancer Society are acceptable provided their source is noted and they are not overemphasized);

(b) The use of phrases such as "the finest kind of treatment", implying that such treatment would be unavailable without insurance;

(c) The reproduction of newspaper articles, etc., containing irrelevant facts and figures;

(d) The use of illustrations which unduly emphasize automobile accidents, cripples or persons confined in beds who are in obvious distress or receiving hospital or medical bills or persons being evicted from their homes due to their hospital bills;

(e) The use of phrases such as "financial disaster", "financial distress", "financial shock", or other phrases implying that financial ruin is likely without insurance, where used in an advertisement which comes within Section 8 (A) (9) relating to policies covering specified illnesses or specified accidents only.

12. An advertisement which uses the word "plan" without identifying it as a disability insurance policy is not permissible.

13. An advertisement which implies in any manner that the prospective insured may realize a profit from obtaining hospital, medical or surgical insurance coverage is not permissible.

14. An advertisement shall not state or imply by word, phrase or illustration that the benefits being offered will supplement any other insurance policy, insurance-type concept, or governmental plan if such is not the fact.

15. An advertisement of a hospital or other similar facility confinement benefit that makes reference to the benefit being paid directly to the policyholder is misleading unless, in making such a reference, the advertisement includes a statement that the benefits may be paid directly to the hospital or other health care facility if an assignment of benefits is made by the policyholder. An advertisement of medical and surgical expense benefits shall comply with this rule in regard to the disclosure of assignments of benefits to providers of services. Phrases such as "you collect", "you get paid", "pays you", or other words or phrases of similar import are acceptable so long as the advertisement indicates that it is payable to the insured or someone designated by the insured.

16. An advertisement which refers to "hospitalization for injury or sickness" omitting the word "covered" when the policy excludes certain sicknesses or injuries, or which refers to "whenever you are hospitalized" or "while you are confined in the hospital" omitting the phrase "for covered injury or sickness", if the policy excludes certain injuries or sickness is unacceptable. Continued reference to "covered injury or sickness" is not necessary where this fact has been prominently disclosed in the advertisement and where the description of sicknesses or injuries not covered are prominently set forth.

17. Advertisements which state that benefits are provided when "you go to the hospital" are unacceptable unless the advertisement clearly sets forth the extent of the coverage.

18. An advertisement which 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. An advertisement which fails to disclose any waiting or elimination periods for specific benefits is unacceptable.

20. An advertisement for a limited policy, or hospital indemnity policy, or a plan of insurance which covers only certain causes of loss (such as dread disease) or which covers only a certain type of loss (such as hospital confinement) is unacceptable if:

(a) The advertisement refers to a total benefit maximum limit payable under the policy in any headline, lead-in or caption without also in the same deadline, lead-in or caption

specifying the applicable daily limits and other internal limits;

(b) The advertisement states any total benefit limit without stating the periodic benefit payment, if any, and the length of time the periodic benefit would be payable to reach the total benefit limit; or

(c) The advertisement prominently displays a total benefit limit which would not, as a general rule, be payable under an average claim.

21. Advertisements which emphasize total amounts payable under hospital, medical or surgical disability insurance coverage or other benefits in a policy, such as benefits for private duty nursing, are unacceptable unless the actual amounts payable per day for such indemnity or benefits are stated.

22. Examples of benefits payable under a policy shall not disclose only maximum benefits unless such maximum benefits are paid for loss from common and probable illnesses or accidents rather than exceptional or rare illnesses or accidents or periods of confinement for such exceptional or rare accidents or illnesses.

23. When a range of benefit levels it set forth in an advertisement, it must be made clear that the insured will receive only the benefit level written or printed in the policy selected and issued. Language which implies that the insured may select the benefit level at the time of filing claims is unacceptable.

24. Language which implies that the amount of benefits payable under a loss-of-time policy may be increased at the time of claim or disability according to the needs of the insured is unacceptable.

25. An advertisement for loss-of-time coverage which is an invitation to contract and which sets forth a range of amounts of benefit levels is unacceptable, unless it also states that eligibility for the benefits is based upon condition of health, income or other economic conditions, or other underwriting standards of the insurer if such is the fact.

26. The term "confining sickness" is an abbreviated expression and must be explained in an advertisement containing the term. Such an explanation might be as follows: "Benefits are payable for total disability due to confining sickness only so long as the insured is necessarily confined indoors." Captions such as "Lifetime Sickness Benefits" or "Five-Year Sickness Benefits" are incomplete if such benefits are subject to confinement requirements. When sickness benefits are subject to confinement requirements, captions such as "Lifetime House Confining Sickness Benefits" or "Five-Year House Confining Sickness Benefits" would be permissible.

27. Advertisements for policies whose premiums are modest because of their limited coverage or limited amount of benefits shall not describe premiums as "low", "low cost", "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.

28. Advertisements which state or imply that premiums will not be changed in the future are not acceptable unless the advertised policies so provide.

29. An advertisement which does not require the premium to accompany the application must not overemphasize that fact and must make the effective date of that coverage clear.

30. An advertisement which exaggerates the effects of statutorily mandated benefits or required policy provisions or which implies that such provisions are unique to the advertised policy is unacceptable. For example, the phrase, "Money Back Guarantee" is an exaggerated description of the "free look" right to examine the policy and is not acceptable.

31. An advertisement which 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".

32. An advertisement which is an invitation to contract and which fails to disclose the amount of any deductible and/or the percentage of any co-insurance factor is not acceptable.

33. An advertisement which fails to state clearly the type of insurance coverage being offered is not acceptable.

34. Language which states or implies that each member under a "family" contract is covered as to the maximum benefits advertised, where such is not the fact, is not acceptable.

35. The importance of diseases rarely or seldom found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

36. A television, radio, mail or newspaper advertisement or lead-generating device which 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 agent may contact the applicant if such is the fact.

37. Phrases or devices which unduly excite fear of dependence upon relatives or charity are unacceptable. Phrases or devices which imply that long sicknesses or hospital stays are common among the elderly are unacceptable.

Guideline 23 CAR § 82-106(a)(2).

23 CAR § 82-106(a)(2) recognizes that certain words and phrases in advertising may have a tendency to mislead the public as to the extent of benefits under an advertised policy.

Consequently, such terms (and those specified in the rule do not represent a comprehensive list but only examples) must be used with caution to avoid any tendency to exaggerate benefits and must not be used unless the statement is literally true in every instance. The use of the following phrases based on such terms or having the same effect must be similarly restricted: "pays hospital, surgical, etc., bills", "pays dollars to offset the cost of medical care", "safeguards your standard of living", "pays full coverage", "pays complete coverage", "pays for financial needs", "provides for replacement of your lost paycheck", "replaces income" or "emergency paycheck". Other phrases may or may not be acceptable depending upon the nature of the coverage being advertised. For example, the phrase "this policy will help to replace your income" is acceptable in advertising for loss-of-time coverage but is unacceptable in advertising for hospital confinement (including "hospital indemnity") coverage.

Also prohibited are words or phrases which exaggerate the effect of benefit payments on the insured's general well-being, such as "worry-free savings plan", "guaranteed savings", "financial peace of mind", and "you will never have to worry about hospital bills again".

Guideline 23 CAR § 82-106(a)(4).

Negative features must be accurately set forth. Any limitation on benefits precluding preexisting conditions also must be restated under a caption concerning exclusions or limitations, notwithstanding that the preexisting condition exclusion has been disclosed elsewhere in the advertisement. (See Guideline 23 CAR § 82-106(c) for additional comments on preexisting conditions.)

Guideline 23 CAR § 82-106(a)(5).

23 CAR § 82-106(a)(5) should be applied in conjunction with 23 CAR § 82-111. Phrases such as "we cut costs to the bone" or "we deal direct with you so our costs are lower" shall not be used.

Guideline 23 CAR § 82-106(a)(6).

The words, phrases, illustrations and concepts listed are illustrations of the words, phrases, illustrations and concepts prohibited by 23 CAR § 82-106(a)(6) which creates the impression of a profit or gain to be realized by the insured when hospitalized.

Illustrations which depict paper currency or checks showing an amount payable are deceptive and misleading and are not permissible. A hospital indemnity advertisement shall not include language such as "pay for a trip to Florida", "buy a new television", or otherwise imply that the insured will make a profit on hospitalization.

An advertisement which uses words such as "extra", "special", or "added" to describe any benefit in the policy is unacceptable.

Although 23 CAR § 82-106(a)(6) prohibits the use of the phrase "tax free", it does not prohibit

the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of disability benefits. The IRS rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits and are not afforded the same favorable tax treatment as premiums for expense incurred hospital, medical and surgical benefit coverages. (Internal Revenue Service, Rev. Rul. 68-451 and Rev. Rul. 69-154.) Prominence either by caption, lead-in, boldface or large type shall not be given in any manner to any statements relating to the tax status of such benefits.

Guideline 23 CAR § 82-106(b)(1).

An advertisement which is an invitation to contract as defined in 23 CAR § 82-103(9) must recite the exceptions, reductions, and limitations as required by the rule and in a manner consistent with 23 CAR § 82-104.

If an exception, reduction or limitation is important enough to use in a policy, it is of sufficient importance that its existence in the policy should be referred to in the advertisement regardless of whether it may also be the subject matter of Ark. Code Ann. §§23-85-101 et seq.

Some advertisements disclose exceptions, reductions and limitations as required, but the advertisement is so lengthy as to obscure the disclosure. Where the length of an advertisement has this effect, special emphasis must be given by changing the format to show the restrictions in a manner which does not minimize, render obscure or otherwise make them appear unimportant.

Guideline 23 CAR § 82-106(b)(2).

23 CAR § 82-106(b)(2) imposes the same disclosure standards as the preceding paragraph with respect to policy provisions providing for waiting, elimination, probationary or similar time periods between the effective date of the policy and the effective date of coverage under the policy or at a time period between the date a loss occurs and the date benefits begin to accrue for such loss. The guideline for 23 CAR § 82-106(b)(1) is equally applicable to this subsection. Where a policy has waiting, elimination, probationary or other such time periods, such provisions must be stated in negative terms. This requirement is comparable to that contemplated in 23 CAR § 82-106(a)(4) as to exceptions, reductions and limitations.

Guideline 23 CAR § 82-106(b)(3).

23 CAR § 82-106(b)(3) is similar to 23 CAR § 82-106(a)(4) and requires a fair and accurate description of exceptions, limitations and reductions in a manner which does not minimize, render obscure or otherwise make them appear unimportant.

Advertisements must state exceptions, limitations and reductions in the negative and must not understate any exception, limitation or reduction or qualify any exception, limitation or

reduction to emphasize coverage described elsewhere (e.g., "Does not pay for [insert exception, limitation or reduction], however, Medicare pays this" is not acceptable, nor is "Does not pay for the first four days in hospital for sickness, but pays for accident from first day"). (Underscoring indicates the manner in which statements are sometimes emphasized.)

Guideline 23 CAR § 82-106(c)(1).

23 CAR § 82-106(c)(1) imposes the same disclosure standards with respect to preexisting condition provisions as noted in Guideline 23 CAR § 82-106(b)(1). The comments under that guideline are equally applicable to this subsection of the rule since the preexisting conditions provision is an exception under the rule.

23 CAR § 82-106(c)(1) implements the objective of 23 CAR § 82-106(a)(4) by requiring in negative terms a description of the effect of a preexisting condition exclusion because such an exclusion is a restriction on coverage. This subdivision also prohibits the use of the phrase "preexisting condition" without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time limit (such as a reduction from three (3) years to two (2) years or to one (1) year) as an affirmative benefit. The words "appropriate definition or description" mean that the term "preexisting condition" must be defined as it is used by the company's claims department or other claims administrations.

Guideline 23 CAR § 82-106(c)(2).

The phrase "no health questions" or words of similar import shall not be used if the policy excludes preexisting conditions.

Use of a phrase such as "guaranteed issue" or "automatic issue", if the policy excludes preexisting conditions for a certain period, must be accompanied by a statement disclosing that fact in a manner which does not minimize, render obscure, or otherwise make it appear unimportant and is otherwise consistent with 23 CAR § 82-104.

Guideline 23 CAR § 82-107.

23 CAR § 82-107 imposes the same disclosure standards with respect to policy provisions relating to renewability, cancellability and termination, modification of benefits, losses or premiums because of age or otherwise as stated in Guideline 23 CAR § 82-106(b)(1). The comments in that guideline are equally applicable to 23 CAR § 82-107.

Advertisements of cancellable disability insurance policies must state that the contract is cancellable or renewable at the option of the company as the case may be. With respect to noncancellable policies and guaranteed renewable policies, the policy provisions, with respect to renewability, must be set forth and defined where appropriate. The following represent illustrations: A policy which is cancellable shall be advertised in a manner similar to "This policy

can be cancelled by the company at any time". A policy which is renewable at the option of the insurance company shall be advertised in a manner similar to "This policy is renewable at the option of the company" or "The company has the right to refuse renewal of this policy" or "Renewable at the option of the insurer". Advertisements of such policies must indicate that the insurer has the right to increase premium rates. With respect to non-cancellable policies and guaranteed renewable policies, the rule requires a summary of the policy provisions with respect to renewability must be set forth and defined where appropriate. The disclosure of provisions relating to renewability requires the use of language such as "non-cancellable", "non-cancellable and guaranteed renewable", or "guaranteed renewable".

23 CAR § 82-107 also requires a statement of the qualifying conditions which constitute limitations on the permanent nature of the coverage. These customarily fall into three categories: (1) age limits, (2) reservation of a right to increase premiums, and (3) the establishment of aggregate limits. For example, "non-cancellable and guaranteed renewable" does not fulfill the requirement of the rule if the policy contains a terminal age of sixty-five (65). In such a case, a proper statement would be "non-cancellable and guaranteed renewable to age sixty-five". If a guaranteed renewable policy reserves the right to increase premiums, the statement must be expanded into language similar to "guaranteed renewable to age sixty-five but the company reserves the right to increase premium rates on a class basis". If the contract contains an aggregate limit after which no further benefits are payable, the above statement must be amplified with the phrase "subject to a maximum aggregate amount of $50,000" or similar language. A policy may have one (1) or more of the three (3) basic limitations and an advertisement must describe each of those which the policy contains. Over fifty percent (50%) of new individual policy issues are guaranteed renewable; therefore, the fact that a policy is guaranteed renewable shall not be exaggerated.
Section 9 also requires the disclosure of any modification of benefits or losses covered because of age or for other reasons. Provisions for reduction of benefits at stated ages must be set forth. For example, a policy may contain a provision which reduces benefits fifty percent (50%) after age sixty (60) although it is renewable to age sixty-five (65). Such a reduction would have to be set forth. Also, a provision for the elimination of certain hazards at any specific ages or after the policy has been in force for a specified time would have to be set forth.

An advertisement for a policy which provides for step-rated premium rates based upon the policy year or the insured's attained age must disclose such rate increases and the times or ages at which such premiums increase.

This rule requires that the qualifying conditions of renewability must be disclosed in a manner which does not minimize or render obscure the qualifying conditions of renewal.

Guideline 23 CAR § 82-108(a).

23 CAR § 82-108(a) must be applied in conjunction with 23 CAR § 82-109 and requires that all such statements must be genuine and not fictitious. Under the rule, the manufacturing, substantive editing or "doctoring up" of a testimonial is clearly prohibited as being false and

misleading to the insurance-buying public. However, language which would be unacceptable under this rule must be edited out of a testimonial.

Guideline 23 CAR § 82-108(b).

Reimbursement for substantial travel and entertainment expenses is also required to be disclosed; however, union scale wages required by union rules are not required to be disclosed. Travel away from the home of the person giving the testimonial or endorsement to a distant location involving transportation expenses, lodging expenses or expenses for meals constitutes payment and must be reflected as a paid endorsement.

Guideline 23 CAR § 82-108(c).

23 CAR § 82-108(c) requires both that approval or endorsement of a policy by an individual, group of individuals, society, association, or other organization be factual and that any proprietary relationship between the sponsoring or endorsing organization and the insurer be disclosed. For example, if the dividend under an association group case is payable to the association, disclosure of that fact is required. Also, if the insurer or an officer of the insurer formed or controls the association, that fact must be disclosed. This guideline also applies to 23 CAR § 82-108(e).

Guideline 23 CAR § 82-109(a).

23 CAR § 82-109(a) prohibits the use of statistics in a manner which is misleading and deceptive. This rule requires the disclosure of all relevant facts and prohibits the use of irrelevant facts.

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

If the term "loss ratio" is used, it shall be properly explained in the context of the advertisement, and it shall be calculated on the basis of premiums earned to losses incurred and shall not be on a yearly run-off basis.

Guideline 23 CAR § 82-109(c).

23 CAR § 82-109(c) does not require that statistics for Arkansas be used since such statistics as hospital charges and average stays may vary from state to state. When nationwide statistics are used such fact should be noted as such unless the statistics on the particular point are substantially the same in Arkansas. Statistics may be used only if they are credible.

Guideline 23 CAR § 82-111.

This section prohibits disparaging, unfair or incomplete comparisons of policies or benefits

which would have a tendency to deceive or mislead the public. The rule does not preclude the use of comparisons by health maintenance organizations, prepaid health plans and other direct service organizations which describe the difference between their prepaid health benefits coverage and indemnity insurance coverage.

Guideline 23 CAR § 82-112(a).

23 CAR § 82-112(a) prohibits advertisements which imply that an insurer is licensed beyond the limits of those jurisdictions where it is actually licensed. An advertisement which contains testimonials from persons who reside in a state in which the insurer is not licensed or which refers to claims of persons residing in states in which the insurer is not licensed implies licensing in those states and therefore is in violation of this rule unless the advertisement states that the insurer is not licensed in those states.

Guideline 23 CAR § 82-112(b).

Although 23 CAR § 82-112(b) permits a reference to an insurer being licensed in a state where the advertisement appears, it does not allow exaggeration of the fact of such licensing nor does it permit the suggestion that competing insurers may not be so licensed because, in most states, an insurer must be licensed in the state to which it directs its advertising.

Terms such as "official", or words of similar import, used to describe any policy or application form are not permissible because of the potential for deceiving or misleading the public.

Guideline 23 CAR § 82-113.

23 CAR § 82-113 recognizes the existence of holding companies. The requirement that the advertisement refer to the policy form number is applicable only to advertisements of individual and franchise policies which are invitations to contract.

Guideline 23 CAR § 82-114.

23 CAR § 82-114 prohibits the use of representations to any segment of the population that a particular policy or coverage is available only to that or similar segments of the population as preferred risks when actually such policy or coverage is available to members of the public at large at the same rates. The rule prohibits an advertisement labeled "Now for Readers of X Magazine".

Guideline 23 CAR § 82-115(a)(1).

23 CAR § 82-115(a)(1) prohibits advertising representing that a product is offered on an introductory, initial, special offer basis or otherwise which (1) will not be available later; or (2) 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 23 CAR § 82-115(a)(2).

23 CAR § 82-115(a)(2) 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 which formerly existed. The 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 Arkansas until three (3) months from the close of the enrollment period have expired. Thus, an insurer must choose whether to use enrollment periods or open enrollment for a product. (See 23 CAR § 82-115(a)(4) for definitions of "a particular insurance product.")

23 CAR § 82-115(a)(2) does not prohibit multiple advertising during an enrollment period through any and all media published or transmitted within this state as long as the enrollment periods for all such advertisements have the same expiration date.
This section does not prohibit the solicitation of members of a group or association for the same product even though there has not been a lapse of three (3) months since the close of a preceding enrollment period which was open to the general public for the same product.

23 CAR § 82-115(a)(2) does not require separation by three (3) months of enrollment periods for the same insurance product in Arkansas if the advertising material is directed by an admitted insurer to persons by direct mail on the basis that a common relationship exists with an entity, such as a bank and its depositors, a department store to its charge account customers or an oil company to its credit card holders, and more than one (1) of such organizations is sponsoring such insurance product at different times. However, the three (3) month rule does apply to one (1) specific sponsor to the same person in Arkansas on the basis of their status as customers of that one (1) specific entity only.

Guideline 23 CAR § 82-115(a)(4).

This rule defines the meaning of "a particular insurance product" in 23 CAR § 82-115(a)(2) and (4) and prohibits advertising of products having minor variations, such as different elimination periods or different amounts of daily hospital indemnity benefits, in a succession of enrollment periods.

Guideline 23 CAR § 82-116.

23 CAR § 82-116 is closely related to the requirements of 23 CAR § 82-109 concerning the use of statistics. The rule prohibits insurers which have been organized for only a brief period of time advertising that they are "old" and also prohibits the use of illustrations of a "home office" building in a manner which is misleading with respect to the actual size and magnitude of the insurer. Also, the occupations of the persons comprising the insurer's board of directors or the public's familiarity with their names or reputations is irrelevant and must not be emphasized.

The preponderance of a particular occupation or profession among the board of directors of an insurer does not justify the advertisement of a plan of insurance offered to the general public as insurance designed or recommended by members of that occupation or profession. For example, it is unacceptable for an insurance company to advertise a policy offered to the general public as "the physicians' policy" or "the doctor's plan" simply because there is a preponderance of physicians or doctors on the board of directors of the insurer. The rule prohibits the use of a recommendation of a commercial rating system unless the purpose, meaning and limitations of the recommendation are clearly indicated.

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Lee Douglass, Insurance Commissioner

August 2, 1991
Date