

Appendix

Interpretive Guidelines

Guideline 23 CAR § 100-101.

Disclosure is one of the principal objectives of the Rule and this section states specifically that the Rule shall assure truthful and adequate disclosure of all material and relevant information. The Rule specifically prohibit some previous advertising techniques.

Guideline 23 CAR § 100-102.

This Rule applies to any "advertisement" as that term is defined in 23 CAR § 100-103(1), (4), (6), and (7) unless otherwise specified in the Rules This Rule applies to group, blanket and individual Medicare supplement insurance advertisements. 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 § 100-105(a).

Guideline 23 CAR § 100-103(a).

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 agents, brokers, producers, and solicitors.

Guideline 23 CAR § 100-103(7).

A "brief description of coverage" in an invitation to inquire may consist of an explanation of Medicare benefits, minimum benefits, standards for Medicare Supplement policies, the manner in which the advertised Medicare Supplement Insurance Policy supplements the benefits of Medicare and meets or exceeds the minimum benefit requirements. An invitation to inquire shall not refer to cost or the maximum dollar amount of benefits payable.

As with all Medicare Supplement Insurance advertisements, an invitation to inquire must not:

- (1) Employ devices which are designed to create undue anxiety in the minds of the elderly or excite fear of dependence upon relatives or charity;
- (2) Exaggerate the gaps in Medicare coverage;
- (3) Exaggerate the value of the benefits available under the advertised policy;
- (4) Otherwise violate the provisions of this Rule.

Guideline 23 CAR § 100-104.

The Rule permits the use of either of the following alternative methods of disclosure:

- (1) The first alternative 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 alternative 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 § 100-105.

Guideline 23 CAR § 100-105(a).

The Rule must be applied in conjunction with 23 CAR §§ 100-101 and 100-104. The Rule 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 Rule 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 piece of material, each piece of material must, independent of all other pieces of material, conform to the disclosure requirements of this Rule.

Guideline 23 CAR § 100-105(b).

The Rule 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. 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 23 CAR § 100-105(a); distinctly different levels of comprehension to the subscribers of various publications may be anticipated.

Guideline 23 CAR § 100-106(a)(1).

The Rule prohibits words, phrases or illustrations which create deception by omission or commission. The following examples are illustrations of the prohibitions created by the Rule:

- (1) An advertisement which describes any benefits that vary by age must disclose the fact.
- (2) An advertisement that uses a phrase such as "no age limit" must disclose that premiums may vary by age or that benefits may vary by age if such is the case.
- (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 in fact the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.

(4) 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.

(5) It is unacceptable to use terms such as "enroll" or "Join" to imply group or blanket insurance coverage when such is not the case.

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

(7) Applications, request forms for additional information, and similar related materials are unacceptable if they resemble paper currency, bonds, stock certificates, 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 governmental agency, such as the Social Security Administration or the Department of Health and Human Services.

(8) An advertisement which uses the word "plan" without identifying it as a Medicare Supplement Insurance policy or health benefits product (in the case of health maintenance organizations, prepaid health plans and other direct service organizations) is being offered.

(9) An advertisement which implies in any manner that the prospective insured may realize a profit from obtaining Medicare Supplement Insurance is not permissible.

(10) An advertisement which fails to disclose any waiting or elimination periods is unacceptable.

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

(12) When a range of benefit levels is 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.

(13) 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.

(14) 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 thirty day right to examine the policy and is not acceptable.

(15) An advertisement which implies that a common type of policy or a combination of common benefits is "new", "unique", "a bonus", "a break through", 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 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) 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 insurance agent may contact the applicant if such is the fact.

(20) Advertisements for policies designed to supplement Medicare shall not employ devices which are designed to create undue anxiety in the minds of the elderly. Such phrases as "here is where most people over 65 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 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.

(21) An advertisement which 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 which 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 designed to supplement or if it otherwise implies that Medicare provides only those benefits which the policy is designed to supplement;

b. Describes the in patient hospital coverage of Medicare as "hospital Medicare", or "Medicare Part A" when the policy does not supplement the non hospital or the psychiatric hospital benefits of Medicare Part A;

c. Fails to describe clearly the operation of the Part or Parts of Medicare which 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 which are supplemented.

(23) Advertisements which 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) 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, is unacceptable.

(25) Any advertisement which uses any 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 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.

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

(27) 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.

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

Guideline 23 CAR § 100-106(a)(2).

The Rule 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 rules 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", or "pays for financial needs". Other phrases may or may not be acceptable depending upon the nature of the coverage being advertised.

The Rule also prohibits words or phrases which exaggerate the effect of benefit payment 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".

Advertisements which are invitations to contract for policies designed to supplement Medicare benefits are unacceptable if they fail to disclose that no hospital confinement benefits will be payable for that portion of a Medicare benefit period for which Medicare pays all hospital confinement expenses (currently 60 days) other than the initial deductible if the policy so provides. The length of said period must be stated in days.

Guideline 23 CAR § 100-106(a)(4).

Explanations must not minimize nor describe restrictive provisions in a positive manner. Negative features must be accurately set forth. Any limitation on benefits precluding pre existing conditions also must be restated under a caption concerning exclusions or limitations, notwithstanding that the pre existing condition exclusion has been disclosed elsewhere in the advertisement. (See Guideline 6 C. for additional comments on pre existing conditions.)

Guideline 23 CAR § 100-106(a)(5).

The rule should be applied in conjunction with 23 CAR § 100-110. Phrases such as "we cut cost to the bone" or "we deal direct with you so our costs are lower" shall not be used.

Guideline 23 CAR § 100-106(b)(1).

An advertisement which is an invitation to contract as defined in 23 CAR § 100-103(6) must recite the exceptions, reductions, and limitations as required by the Rule and in a manner consistent with 23 CAR § 100-104.

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 a provision of Arkansas Code § 23-85-102 et seq.

Some advertisements disclose exceptions, reductions, and limitations as required, but the advertisement is so lengthy that it obscures 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 § 100-106(c)(1).

The Rule implements the objective of 23 CAR § 100-106(a)(4) by requiring in negative terms a description of the effect of a pre existing condition exclusion because such an exclusion is a restriction on coverage. The subdivision also prohibits the use of the phrase "pre existing condition without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time

limit as an affirmative benefit. The words "appropriate definition or description" mean that the term "pre existing condition" must be defined as it is used by the company's claims department.

Guideline 23 CAR § 100-106(c)(2).

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

Use of a phrase such as "guaranteed issue", or "automatic issue", if the Policy excludes pre existing 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 § 100-104.

Guideline 23 CAR § 100-106(c)(3).

Some states require approval of the application even when the application is not attached to the policy when issued. The rule does not change such a requirement. The text of this Guideline should be modified to reflect the rule applicable in the particular state.

Guideline 23 CAR § 100-107.

Advertisements of cancellable Medicare Supplement 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 Rule 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, "noncancellable and guaranteed renewable" does not fulfill the requirements of the Rule if the policy contains a terminal age. In such a case, a proper statement would be "Noncancellable and guaranteed renewable to age _____. "If a guaranteed renewable policy reserves the right to increase premiums, the statement must be expanded into language similar to guaranteed renewable to age _____ 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 Medicare supplement insurance policy may have one or more of the three basic limitations and an advertisement must describe each of those which the policy contains. over 50% of new individual policy issues are guaranteed renewable; therefore, the fact that a policy is guaranteed renewable shall not be exaggerated.

An advertisement for a Medicare supplement insurance policy which provides for age 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 premium increases.

Guideline 23 CAR § 100-108(a).

The Rule must be applied in conjunction with 23 CAR § 100-108 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 § 100-108(c).

The Rule requires that both 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 § 100-108(e).

Guideline 23 CAR § 100-108(e).

The Rule 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.

Guideline 23 CAR § 100-109(a).

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

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, 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 run-off basis.

Guideline 23 CAR § 100-109(c).

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, such 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 23 CAR § 100-110.

This Rule 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 § 100-111(a).

The Rule 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 § 100-111(b)

Although the Rule 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. This guideline also applies to 23 CAR § 100-111(c).

The Rule does not prohibit a health maintenance organization, prepaid health plan or other direct service organization from using the term "federally qualified" or "federally certified" where that status has been granted by the U.S. Health Care Financing Administration.

Guideline 23 CAR § 100-114(a)(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 23 CAR § 100-114(a)(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 which 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 3 months from the close of the enrollment period. Thus, an insurer must choose whether to use enrollment periods or open enrollment for a product. (See 23 CAR § 100-114(a)(4) for the definition of "a particular insurance product".)

The Rule 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.

The Rule 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 (insert number) months since the close of a preceding enrollment period which was open to the general public for the same product.

The Rule does not require separation by 3 months of enrollment periods for the same insurance product in this State 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. Examples of such would be 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 of such organizations is sponsoring such insurance product at different times if providing such insurance under such a method is not otherwise prohibited by law. However, the 3 month rule does apply to one specific sponsor to the same persons in this State on the basis of their status as customers of that one specific entity only.

Guideline 23 CAR § 100-114(a)(4)

The Rule defines the meaning of "a particular insurance product" in 23 CAR § 100-114(a)(2) and prohibits advertising of products having minor variations, such as different periods or different amounts of daily hospital indemnity benefits, in a succession of enrollment periods.

Guideline 23 CAR § 100-115

The Rule is closely related to the requirements of Section 9 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 emphasizing the 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

Guideline 23 CAR § 100-116

The text of Subsection (a) is identical to the text of the first paragraph of the Enforcement Section of previous versions of the Rule except the last sentence of the Subsection has been revised to require that the advertising file be maintained either for a period of four years (rather than three as previously) or until the next regular examination of the insurer, whichever is the longer period of time.