Title 37
INSURANCE
Part XI. Rules

Chapter 1. Rule Number 3A—Advertisement of Medicare Supplement Insurance

§101. Purpose

A. The proper expansion of Medicare supplement insurance coverage is in the public interest. Appropriate advertising can broaden the distribution of insurance among those eligible for Medicare. Advertising can increase the awareness of beneficial forms of coverage and thereby encourage product competition. Advertising can also provide the insurance-buying public with the means by which it can compare the advantages of competing forms of coverage.

B. Insurance advertising has become increasingly important in the years since the *1956 NAIC Rules Governing Advertisement of Accident and Sickness Insurance* were developed. The increasing availability of coverage under group insurance plans and the advent of governmental benefit programs have complicated the decisions the insurance-buying public must make to avoid duplication of benefits and gaps in coverage. The consequent need for detailed information about insurance products is reflected in the requirements for disclosure established by the *1972 NAIC Rules, as amended, Governing Advertisements of Accident and Sickness Insurance*. This need for detailed disclosure is especially critical in helping to assure that individuals eligible for Medicare receive full and truthful advertising for Medicare supplement insurance. The NAIC has, therefore, determined that, while the *1972 NAIC Rules, as amended, Governing Advertisements of Accident and Sickness Insurance* did address Medicare supplement insurance, these new *Rules and Interpretive Guidelines* addressed solely to Medicare supplement insurance advertising are needed to replace the previous *1972 Rules and Interpretive Guidelines* with respect to Medicare supplement insurance advertising.

C. Although modern insurance advertising patterns much of its design after advertising for other goods and service, the uniqueness of insurance as a product must always be kept in mind in developing advertising. This is particularly true with respect to Medicare supplement insurance advertising. By the time an insured discovers that a particular insurance product is unsuitable for his needs, it may be too late for him to return to the marketplace to find a more satisfactory product.

D. The insurance-buying public should be afforded a means by which it can determine, in advance of purchase, the desirability of the competing insurance products proposed to be sold. This can be accomplished by advertising which accurately describes the advantages and disadvantages of the insurance product without either exaggerating the benefits or minimizing the limitations. Properly designed advertising can provide such description and disclosure without sacrificing the sales appeal which is essential to its usefulness to the insurance-buying public and the insurance business. The purpose of the new *NAIC Rules Governing Advertisements of Medicare Supplement Insurance* is to establish minimum criteria to assure proper and accurate description and disclosure.

E. The purpose of this rule is to provide prospective purchasers with clear and unambiguous statements in the advertisements of Medicare supplement insurance; to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance. This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which prevents unfair, deceptive, and misleading advertising and is conductive to accurate presentation and description to the insurance-buying public through the advertising media and material used by the insurance agents and companies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§103. Applicability

A. This rule shall apply to any advertisement of Medicare supplement insurance as that term is defined herein, unless otherwise specified in these rules, which the insurer knows, or reasonably should know, is intended for presentation, distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker, producer, or solicitor, as these terms are defined in the *Insurance Code* of this state.

B. Every insurer shall establish, and at all times maintain, a system of control over the content, form, and method of dissemination of all of its Medicare supplement insurance advertisements. All such advertisements, regardless of by whom written, created, designed, or presented shall be the responsibility of the insurers benefiting directly or indirectly from their dissemination.

C. Advertising materials which are reproduced in quantity shall be identified by form numbers or other identifying means. Such identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications, or other materials used by the insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§105. Definitions

Advertisement—

1.a. printed and published material, audiovisual material, and descriptive literature used by or on behalf of an insurer in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, and similar displays;

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 herein defined; and

c. prepared sales talks, presentations, and material for use by agents, brokers, producers, and solicitors whether prepared by the insurer of the agent, broker, producer, or solicitor.

2. *advertisement* includes advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements;

3. *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 in-house 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 such 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.

Certificate—any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this state.

Exception—any provision in a policy whereby coverage for a specified hazard is entirely eliminated. It is a statement of a risk not assumed under the policy.

Institutional Advertisement—an advertisement having as its sole purpose the promotion of the reader's, viewer's, or listener's interest in the concept of Medicare supplement insurance, or the promotion of the insurer as a seller of Medicare supplement insurance.

Insurer—shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, hospital service corporation, medical service corporation, prepaid health plan, and any other legal entity which is defined as an *insurer* in the *Insurance Code* of this state and is engaged in the advertisement of itself, or Medicare supplement insurance.

Invitation to Contract—an advertisement which is neither an institutional advertisement nor an invitation to inquire.

Invitation to Inquire—an advertisement having as its objective the creation of a desire to inquire further about Medicare supplement insurance which is limited to a brief description of coverage, and which shall contain a provision in the following or substantially similar form:

> "This policy has (exclusions) (limitations) (reductions of benefits) (terms under which the policy may be continued in force or discontinued). For costs and complete details of the coverage, call (or write) your insurance agent or the company (whichever is applicable)."

Lead-Generating Device—any communication directed to the public which, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance.

Limitation—any provision which restricts coverage under the policy, other than an exception or a reduction.

Medicare—the *Health Insurance for the Aged Act*, Title XVIII of *The Social Security Amendments of 1965 as Then Constituted or Later Amended*, or Title 1, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America, and popularly known as the "*Health Insurance for the Aged Act*, as then constituted and any later amendments or substitutes thereof" or words of similar import.

Medicare Supplement Insurance—a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

Person—any natural person, association, organization, partnership, trust, group, discretionary group, corporation, or any other entity.

Reduction—any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§107. Method of Disclosure of Required Information

A. All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which such 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§109. 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 department 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 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 representation 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 which is deceptive or misleading with regard to the status, character, or proprietary of representative capacity of such person or the true purpose of the advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§111. Advertisements of Benefits, Losses Covered, or Premiums Payable

A. Deceptive Words, Phrases or Illustrations Prohibited

1. No advertisement shall omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

2. No advertisements shall contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help fill some of the gaps that Medicare and your present insurance leave out," "this policy pays all that Medicare doesn't," or similar words and phrases, in a manner which exaggerates any benefit beyond the terms of the policy.

3. An advertisement which also is an invitation to join an association, trust, or discretionary group must solicit insurance coverage on a separate and distinct application which requires separate signature for each application. The insurance program must be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership, if that is the case.

4. An advertisement shall not contain descriptions of policy limitations, exceptions, or reductions worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a benefit builder or stating, "even pre-existing conditions are covered after six months." Words and phrases used in an advertisement to describe such policy limitations, exceptions, and reductions shall fairly and accurately describe the negative features of such limitations, exceptions, and reductions of the policy offered.

5. An advertisement of Medicare supplement insurance sold by direct response shall not state or imply that "because no insurance agent will call and no commissions will be paid to 'agents' that it is a low cost plan" or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in marketing by direct response.

B. Exceptions, Reductions, and Limitations

1. An advertisement which is an invitation to contract shall disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy.

2. When a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an

advertisement which is subject to the requirements of the preceding paragraph shall disclose the existence of such periods.

3. An advertisement shall not use the words "only," "just," "merely," "minimum," or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "this policy is subject to the following minimum exceptions and reductions."

C. Pre-Existing Conditions

1. An advertisement which is an invitation to contract shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term *pre-existing condition* without an appropriate definition or description shall not be used.

2. When a Medicare supplement insurance policy does not cover losses resulting from pre-existing 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 thereunder. This 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. When an advertisement contains an application form to be completed by the applicant and returned by mail, such application form shall contain a question or statement which reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows:

a. Do you understand that this policy will not pay benefits during the first six months after the issue date for a disease or physical condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the policy issue date? YES

b. or substantially the following statement:

I understand that the policy applied for will not pay benefits for any loss incurred during the first six (6) months after the issue date due to a disease or physical condition for which I received medical advice or for which treatment was recommended by, or received from, a physician within six (6) months before the issue date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§113. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability, and Termination

A. An advertisement which is an invitation to contract shall disclose the provisions relating to renewability, cancellability, and termination and any modification of benefits, losses covered, or premium because of age or for other reasons, in manner which shall not minimize or render obscure the qualifying conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§115. Testimonials or Endorsements by Third Parties

A. Testimonials and endorsements used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer, in using a testimonial or endorsement, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules. When a testimonial or endorsement is used more than one year after it was originally given, a confirmation must be obtained.

B. A person shall be deemed a spokesperson if the person making the testimonial or endorsement:

1. has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise; or

2. has been formed by the insurer, is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer; or

3. has any person in a policy-making position who is affiliated with the insurer in any of the above described capacities; or

4. is in any way directly or indirectly compensated for making a testimonial or endorsement.

C. The fact of a financial interest or the proprietary or representative capacity of a spokesperson shall be disclosed in an advertisement and shall be accomplished in the introductory portion of the testimonial or endorsement in the same form and with equal prominence thereto. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement". The requirement of this disclosure may be fulfilled by use of the phrase, "Paid Endorsement," or words of similar import in a type style and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. In the case of television or radio advertising, the required disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.

D. The disclosure requirement of this rule shall not apply where the sole financial interest or compensation of a spokesperson, for all testimonials or endorsements made on behalf of the insurers, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for TV or radio performances.

E. An advertisement shall not state or imply that an insurer or a Medicare supplement insurance policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless such is the facts and unless any proprietary

relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policy-making position in the association, that fact must be disclosed.

F. When a testimonial refers to benefits received under a Medicare supplement insurance policy, the specific claim date, including claim number, date of loss, and other pertinent information shall be retained by the insurer for inspection for a period of four 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 which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefit being advertised is not permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§117. Use of Statistics

A. An advertisement relating to the dollar amount of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from a policy advertised unless such is the fact, and when applicable to other policies or plans, shall specifically so state.

1. 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 do not relate to the policy being advertised.

2. An advertisement using statistics which describe an insurer, such as assets, corporate structure, financial standing, age, product lines, or relative position in the insurance business, may be irrelevant, and if used at all, must be used with extreme caution because of the potential for misleading the public. As a specific example, an advertisement for Medicare supplement insurance which refers to the amount of life insurance which the company has in force or the amounts paid out in life insurance benefits is not permissible unless the advertisement clearly indicates the amount paid out for each line of insurance.

B. An advertisement shall not represent or imply that claim settlements by the insurer are liberal or generous, or use words of similar import, or state or imply that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for a unique claim for the policy advertised is misleading and shall not be used.

C. The source of any statistics used in an advertisement shall be identified in such advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§119. Disparaging Comparisons and Statements

A. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and shall not disparage competitors, their policies, services, or business methods and shall not disparage or unfairly minimize competing methods of marketing insurance.

1. An advertisement shall not contain statements such as "no red tape," or "here is all you do to receive benefits."

2. Advertisements which state or imply that competing insurance coverages customarily contain certain exceptions, reductions, or limitations not contained in the advertised policies are unacceptable unless such exceptions, reductions, or limitations are contained in a substantial majority of such competing coverages.

3. Advertisements which state or imply that an insurer's premiums are lower or that its loss ratios are higher because its organizational structure differs from that of competing insurers are unacceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§121. Jurisdictional Licensing and Status of Insurer

A. An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

B. An advertisement shall not create the impression, directly or indirectly, that the insurer; its financial condition or status; or the payment of its claims; or the merits, desirability or advisability of its policy forms or kinds of plans of insurance are approved, endorsed, or accredited by any division or agency of this state or the United States government.

C. An advertisement shall not imply that approval, endorsement, or accreditation of policy forms or advertising has been granted by any division or agency of the state or federal government. Approval of either policy forms or advertising shall not be used by an insurer to imply or state that a governmental agency has endorsed or recommended the insurer, its policies, advertising, or its financial conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§123. Identity of Insurer

A. The name of the actual insurer shall be stated in all of its advertisements. The form number or numbers of the policy advertised shall be stated in an advertisement which is an invitation to contract. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device which, with or without disclosing the name of the actual insurer, would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

B. No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combination of words, symbols or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.

C. Advertisements, envelopes, or stationery which employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies or other insurers are not permitted if they may lead the public to believe:

1. that the advertised coverages are somehow provided by, or are endorsed by, such governmental agencies or such other insurers;

2. that the advertiser is the same as, is connected with, or is endorsed by such governmental agencies or such other insurers.

D. No advertisement shall use the name of a state or political subdivision thereof in a policy name or description.

E. No advertisement in the form of envelopes or stationery of any kind may use any names, service mark, slogan, symbol, or any device in such a manner that implies that the insurer or the policy advertised, or that any agent who may call upon the consumer in response to the advertisement is connected with a governmental agency, such as the Social Security Administration.

F. No advertisement may incorporate the word *Medicare* in the title of the plan or policy being advertised unless, wherever it appears, said word is qualified by language differentiating it from Medicare. Such an advertisement, however shall not use the phrase, "_____ Medicare Department of the _____ Insurance Company," or language of similar import.

G. No advertisement shall be used that fails to include the disclaimer to the effect of, "Not connected with or endorsed by the U.S. Government or the federal Medicare program."

H. No advertisement may imply that the reader may lose a right or privilege or benefit under federal, state, or local law if he fails to respond to the advertisement.

I. The use of letter, initials, or symbols of the corporate name or trademark that would have the tendency or capacity to mislead or deceive the public as to the true identity of the insurer is prohibited unless the true, correct, and complete name of the insurer is in close conjunction and in the same size type as the letter, initials, or symbols of the corporate name or trademark.

J. The use of the name of an agency or "_____ Underwriters" or "_____ Plan" in type, size, and location so as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer is prohibited.

K. The use of an address so as to mislead or deceive as to true identity of the insurer, its location, or licensing status is prohibited.

L. No insurer may use in the trade name of its insurance policy any terminology or words so similar to the name of a governmental agency or governmental program as to have the tendency to confuse, deceive, or mislead the prospective purchaser.

M. All advertisements used by agents, producers, brokers, or solicitors of an insurer must have prior written approval of the insurer before they may be used.

N. An agent who makes contact with a consumer, as a result of acquiring that consumer's name from a lead generating device, must disclose such fact in the initial contact with the consumer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§125. Group or Quasi-Group Implications

A. An advertisement of a particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy, and as such, enjoy special rates or underwriting privileges, unless such is the fact.

B. This regulation prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements which state or imply that their occupational status entitles them to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§127. 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. An advertisement shall not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising Medicare supplement insurance.

2. An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same product and the opening of the enrollment period. The advertisement shall indicate the date by which the applicant must mail the application, which shall be not less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. This rule applies to all advertising media, (i.e., mail, newspapers, radio, television, magazines and periodicals), by any one insurer. It is not applicable to solicitations of employees or members of a particular group or association who otherwise would be eligible under specific provisions of the *Insurance Code* for group, blanket, or franchise insurance. The phrase, "any one insurer," includes all the affiliated companies of a group of insurance companies under common management or control.

3. This rule prohibits any statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless such is the fact.

4. The phrase, "a particular insurance product," in §127.A.2 means an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

B. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium must be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears. The term *juxtaposition* means side by side or immediately above or below.

C. Special awards, such as a *safe driver award* shall not be used in connection with advertisements of Medicare supplement insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§129. Statements about an Insurer

A. An advertisement shall not contain statements which are untrue in fact, or by implications, misleading with respect to the assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitations of the scope and extent of the recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§131. Enforcement Procedures

A. Advertising File

1. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of its individual policies and typical printed, published, or prepared advertisements of its blanket, franchise, and group policies hereafter disseminated in this or any other state, whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be available for inspection by this department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time.

B. Certificate of Compliance

1. Each insurer required to file an annual statement which is now, or which hereafter becomes subject to the provisions of these rules, must file with this department, with its annual statement, a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that, to the beat of his knowledge, information, and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied, or were made to comply, in all respects with the provisions of these rules and the insurance laws of this state, as implemented and interpreted by these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§133. Severability Provision

A. If any Section or portion of a Section of these rules, or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the rules, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§135. Effective Date

A. This rule shall be effective on the sixtieth day following formal adoption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

§137. Interpretive Guidelines for Rules Governing Advertisements of Medicare Supplement Insurance

A. Disclosure is one of the principal objectives of the rules and §137 states specifically that the rules shall assure truthful and adequate disclosure of all material and relevant information. The rules specifically prohibit some previous advertising techniques.

B. These rules apply to any *advertisement* as that term is defined in §105, unless otherwise specified in the rules. These rules apply 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 §109.A.

C. 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 use of all media for communications by agents, brokers, producers, and solicitors.

D. 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 these rules.

E.1. The rule permits the use of either of the following alternative methods of disclosure.

a. 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.

b. 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."

2. 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 §107.

F.1. The rule must be applied in conjunction with §101.E and §105 of the rules. 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.

2. The 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, independently of all other pieces of material, conform to the disclosure requirements of this rule.

G. 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 §137.F, distinctly different levels of comprehension to the subscribers of various publications may be anticipated.

H. The rule prohibits the use of incomplete statements and words or phrases 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" with reference to 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, or 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 government 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 is not permissible.

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 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 30-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 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 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 *Medicare hospital*, 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 that 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 falls to disclose the amount of any deductible and/or the percentage of any co-insurance factor is not acceptable.

I.1. 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.

2. 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."

3. Advertisements which are an invitation 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.

J. 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 must also be restated under a caption concerning exclusions or limitations, notwithstanding that the pre-existing condition exclusion has been disclosed elsewhere in the advertisement. See §137.M, N, and O for additional comments on pre-existing conditions.)

K. The rule should be applied in conjunction with §117. Phrases such as "we cut cost to the bone" or "we deal direct with you so our costs are lower" shall not be used.

L.1. An advertisement which is an invitation to contract, as defined in §105, must recite the exceptions, reductions, and limitations, as required by the rule and in a manner consistent with §105.

2. 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 the Uniform Individual Accident and Sickness Policy Provision Law.

3. 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.

M. The rule implements the objective of §111.C.1 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.

N. 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 issues" if a 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 §105.

O. 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.

P.1. Advertisements of cancelable Medicare supplement policies must state that the contract is cancelable 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.

2. 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:

a. age limits;

b. reservation of a right to increase premiums; and

c. 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 "non-cancelable 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 percent of new individual policy issues are guaranteed renewable; therefore, the fact that a policy is guaranteed renewable shall not be exaggerated.

3. 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.

Q. The rule must be applied in conjunction with §115 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 these rules must be edited out of a testimonial.

R. 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 §115.E.

S.1. 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.

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

3. 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.

T. 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 way only be used if they are current and credible.

U. The rule prohibits disparaging, unfair, or incomplete comparisons of policies or benefits which would have a tendency to decline 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.

V. 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.

W.1 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.

2. 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 §119.A.3.

X. The rule prohibits advertising representing that a product is offered on an introductory, initial, or 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.

Y.1. 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 (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. (See §137.Y.1) for the definition of *a particular insurance product*.)

2. 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.

3. 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 months) since the close of a preceding enrollment period which was open to the general public for the same product.

4. The rule does not require separation by (insert number) 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 (insert number) 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.

Z. The rule defines the meaning of *a particular insurance product* in §137.Y.1 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.

AA. The rule is closely related to the requirements of §115 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 doctors' 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 recommendation of a commercial rating system unless the purpose, meaning, and limitations of the recommendation are clearly indicated.

BB. The text of Subsection A is identical to the text of the first paragraph of the Enforcement Section of previous drafts of the rules, 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.

CC. The rule is attached as an example of the text of a rule which may be used, at the option of the commissioner, in a state which reviews advertisements prior to use. The NAIC takes no position here on the question of whether direct response advertising material should be subject to prior review by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991).

Chapter 3. Rule Number 4—Interlocal Risk Management Agency

§301. Purpose

A. The purpose of this rule is to adopt provisions and uniform guidelines for their interpretation as authorized specifically by Act 462 of the 1979 Session of the Legislature. This rule is designed to facilitate and implement the provisions of that Act. It is intended to supplement, not alter in any manner, the provisions of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. Title 22, Section 2 of 1950 and Act 462 of the 1979 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 16:621 (July 1990).

§303. Applicability

A. These provisions shall be applicable to any and all entities which may be defined an *interlocal risk management agency* by Act 462 of the 1979 Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. Title 22, Section 2 of 1950 and Act 462 of the 1979 Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 16:621 (July 1990).

§305. Definitions

Certified Audit—an audit upon which the auditor expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurance fund in conformity with generally accepted accounting principles consistently applied, and accordingly, include such test of the accounting records and such other auditing procedures as considered necessary by such auditor.

Contingent Liability—the amount that the interlocal risk management agency may be obligated to pay in excess of a given year's normal premium collected or on hand.

Department—the Insurance Department of the State of Louisiana.