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**RULE AND REGULATION 11**

**ADVERTISEMENTS OF DISABILITY INSURANCE**

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**SECTION 1. Purpose**

The purpose of Rule and Regulation 11, "Advertisements of Disability Insurance", (hereinafter referred to as rule or regulation) is to protect prospective purchasers with respect to the advertisement of disability insurance in the same manner as the rules governing advertisements of Medicare supplement insurance. This rule assures the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as disability insurance. This is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of disability insurance in a manner which prevents unfair, deceptive and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by insurance agents and companies.

**SECTION 2. Authority**

The authority for this rule is the power given to the Commissioner by Ark. Code Ann. §25-15-203, §25-15-204, §23-61-108, §§23-66-201 et seq., §§23-74-101 et seq., §§23-75-101 et seq., §§23-76-101 et seq., §§23-85-101 et seq., §§23-86-101 et seq., and other applicable provisions of the Arkansas Code.

SECTION 3. Effective Date

This rule shall be effective September 2, 1991.

SECTION 4. Applicability

A. Except for Medicare supplement insurance, this rule shall apply to any "advertisement," as that term is defined herein unless otherwise specified in this rule, which the insurer, hereinafter defined, knows or reasonably should know is intended for presentation, distribution or dissemination in Arkansas when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker or solicitor, as those terms are defined in the Insurance Code of Arkansas. This rule applies to all disability insurance (except for Medicare supplement insurance), including but not limited to group, blanket, and individual disability insurance.

B. Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

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.

SECTION 5. Definitions

A. (1) An advertisement for the purpose of this rule shall include:

(a) Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards and similar displays; and

(b) Descriptive literature and sales aids of all kinds issued by an insurer, agent, 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 and solicitors whether prepared by the insurer or the agent, broker or solicitor.

(2) The definition of "advertisement" includes advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements.

(3) The definition of "advertisement" does not include:

(a) Material to be used solely for the training and education of an insurer's employees, agents or brokers;

(b) Material used 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 clearly indicates that it is preliminary to the issuance of a booklet.

B. "Policy" and/or "Disability Insurance Policy" for the purpose of this rule shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides disability benefits or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts. Disability insurance policy shall not include any Medicare supplement insurance policy.

C. "Certificate" means for the purpose of this rule, any certificate issued under a group disability insurance policy, which certificate has been delivered or issued for delivery in Arkansas.

D. "Insurer" for the purpose of this rule 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 Arkansas and is engaged in the advertisement of itself, or a disability insurance policy.

E. "Exception" for the purpose of this rule shall mean 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.

F. "Reduction" for the purpose of this rule shall mean 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 and such reduction has not been used.

G. "Limitation" for the purpose of this rule shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

H. "Institutional Advertisement" for the purpose of this rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of disability insurance, or the promotion of the insurer as a seller of disability insurance.

I. "Invitation to Inquire" for the purpose of this rule shall mean an advertisement having as its objective the creation of a desire to inquire further about disability insurance and 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] (reduction 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]."

J. "Invitation to Contract" for the purpose of this rule shall mean an advertisement which is neither an invitation to inquire nor an institutional advertisement.

K. "Person" for the purpose of this rule shall mean any natural person, association, organization, partnership, trust, group, discretionary group, corporation or any other entity.

L. "Lead-Gen rating Device", for the purpose of this rule, shall mean 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 Arkansas for the purchase of disability insurance.

M. "Commissioner" or "Commissioner of Insurance" for the purpose of this rule shall mean the Insurance Commissioner of this State as defined in Ark. Code Ann. §23-60-102.

N. "Department" for the purpose of this rule shall mean the Arkansas Insurance Department as defined in Ark. Code Ann. §23-60-102.

O. "Disability Insurance" for the purpose of this rule as defined in Ark. Code Ann. §23-62-103 is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expenses thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Transaction of disability insurance does not include workers' compensation.

#### SECTION 6. Method of Disclosure of Required Information

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 fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

#### SECTION 7. Form and Content of Advertisements

A. The format and content of an advertisement of a disability insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.

B. Advertisements shall be truthful and not misleading in fact or by implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

C. An insurer must clearly identify its disability insurance policy as an insurance policy. A policy trade name must be followed by the words "Insurance Policy" or similar words clearly identifying the fact that an insurance policy or health benefits product (in the case of health maintenance organizations, prepaid health plans and other direct service organizations) is being offered.

D. No insurer, agent, broker, solicitor or other person shall solicit a resident of Arkansas for the purchase of disability insurance in connection with or as the result of the use of advertisement by such person or any other persons, where the advertisement:

(1) Contains any misleading representations or misrepresentations, or is otherwise untrue, deceptive or misleading with regard to the information imparted, the status, character or representative capacity of such person or the true purpose of the advertisement; or

(2) Otherwise violates the provisions of this rule.

E. No insurer, agent, broker, solicitor or other person shall solicit residents of Arkansas for the purchase of disability insurance through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of such person or the true purpose of the advertisement.

#### SECTION 8. Advertisements of Benefits Payable, 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 advertisement 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", "the policy will help to replace your income", (when used to express loss of time benefits), or similar words and phrases, in a manner which exaggerates any benefits 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 signatures for each application. The separate and distinct applications required need not be on a separate document or contained in a separate mailing. 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

preexisting conditions are covered after two years". 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 disability 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 the marketing by direct response.

(6) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax-free", "extra cash", "extra income", "extra pay", or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

(7) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement, unless such statements of such monthly or weekly benefit amounts are in juxtaposition with equally prominent statements of the benefit payable on a daily basis. The term "juxtaposition" means side by side or immediately above or below. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

(8) No advertisement of a policy covering only one disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(9) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY", "THIS IS A CANCER ONLY POLICY", or "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".

#### 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 at 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", "necessary" or similar words or phrases to describe the applicability of any exceptions, reductions, limitations or exclusions such as: "This policy is subject to the following minimum exceptions and reductions."

#### C. Preexisting 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 "preexisting condition" without an appropriate definition or description shall not be used.

(2) When a disability insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, 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 preexisting 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:

"Do you understand that this policy will not pay benefits during the first [insert number] year(s) after the issue date for a disease or physical condition which you now have or have had in the past? \_\_\_\_\_ YES"

or substantially the following statement:

"I understand that the policy applied for will not pay benefits for any loss incurred during the first (insert number) year(s) after the issue date on account of disease or physical condition which I now have or have had in the past."

SECTION 9. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability and Termination

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 premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

SECTION 10. 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 this rule. When a testimonial or endorsement is used more than one (1) 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. 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 requirements 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 insurer, 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 disability, insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, 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 disability insurance policy, the specific claim data, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of four (4) years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time. The use of testimonials 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.

#### SECTION 11. Use of Statistics

A. An advertisement relating to the dollar amounts 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 the 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 disability 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 disability 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 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.

#### SECTION 12. Identification of Plan or Number of Policies

A. When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.

B. When an advertisement which is an invitation to contract refers to various benefits which may be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

#### SECTION 13. Disparaging - Comparisons and Statements

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.

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

B. 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.

C. 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.

#### SECTION 14. 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 or plans of insurance are approved, endorsed or accredited by any division or agency of Arkansas 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 any 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 condition.

#### SECTION 15. 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, 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 Arkansas, 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 in governmental agencies or by 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; or

(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 name, 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 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.

H. The use of letters, 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 letters, initials or symbols of the corporate name or trademark.

I. 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.

J. 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.

K. 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.

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

M. 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.

#### SECTION 16. 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 rule prohibits the solicitations 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.

#### SECTION 17. 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 disability insurance.

(2) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within Arkansas unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (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 inapplicable to solicitations of employees or members of a particular group or association which 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 Paragraph (A) (2) of this section 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.

C. Special awards, such as a "safe drivers' award" shall not be used in connection with advertisements of disability insurance.

#### SECTION 18. Statements About an Insurer

An advertisement shall not contain statements which are untrue in fact, or by implication 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.

#### SECTION 19. Enforcement Procedures

A. Advertising File. 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 subject to regular and periodic inspection by this Department. All such advertisements shall be maintained in said file for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

B. Certificate of Compliance. Each insurer required to file an Annual Statement which is now or which hereafter becomes subject to the provisions of this rule 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 best 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 this rule and the insurance laws of this State as implemented and interpreted by this rule.

#### SECTION 20. Filing for Prior Review

The Commissioner may, at his discretion, require the filing with the Department, for review and approval prior to use, of any disability- insurance advertising material. Such advertising material must be filed by the insurer with the Department not less than thirty (30) days prior to the date the insurer desires to use the advertisement.

#### SECTION 21. Severability Provision

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

## APPENDIX

### INTERPRETIVE GUIDELINES FOR RULE 11 ADVERTISEMENTS OF DISABILITY INSURANCE

4 - 18

#### Guideline 4 (A).

Section 4, Subsection (A) applies to any "advertisement" as that term is defined in Section 5, Subsections (A), (H), (I) and (J) unless otherwise specified in this rule. This rule applies to all disability insurance (except Medicare supplement insurance), including but not limited to group, blanket, and individual disability insurance. Certain distinctions, however, are applicable to these categories. Among them is the level of conversance with insurance, a factor which is covered by Section 7, Subsection (A) of this rule.

#### Guideline 5 (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 insurers, agents, brokers and solicitors.

#### Guideline 5 (B).

In Section 5, Subsection (B), the language "except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts" means except disability, waiver of premium and double indemnity benefits included in life insurance, endowment or annuity contracts or contracts supplemental thereto which contain only such provisions which: (1) provide additional benefits in case of death or dismemberment or loss of sight by accident or as (2) operate to safeguard such contracts against lapse, or to give a special surrender value, or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled as defined by the contract or supplemental contract.

#### Guideline 5 (I).

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

- (a) The dollar amount of benefits payable; and/or
  - (b) The period of time during which benefits are payable.
2. An invitation to inquire may not refer to cost.
3. As with all disability insurance advertisements, an invitation to inquire must not:
- (a) Employ devices which are designed to create undue anxiety;
  - (b) Exaggerate the value of the benefits available under the advertised policy; or
  - (c) otherwise violate the provisions of this rule.

#### Guideline 6.

Section 6 permits the use of either of the following methods of disclosure:

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

2. The second method provides for the disclosure of exceptions, limitations, reductions and other restrictions not in conjunction with the provisions describing policy benefits but under appropriate captions of such prominence that the information shall not be minimized, rendered obscure or otherwise made to appear unimportant. The phrase "under appropriate

captions" means that the title must be accurately descriptive of the captioned material. Appropriate captions include the following: "Exceptions", "Exclusions", "Conditions Not Covered", and "Exceptions and Reductions". The use of captions such as, or similar to, the following are not acceptable because they do not provide adequate notice of the significance of the material: "Extent of Coverage", "Only these Exclusions", or "Minimum Limitations".

In considering whether an advertisement complies with the disclosure requirements of this rule, the rule must be applied in conjunction with the form and content standards contained in Section 7.

Guideline 7 (A).

Section 7, Subsection (A) must be applied in conjunction with Sections 1 and 6 of this rule. This section refers specifically to "format and content" of the advertisement and the "overall" impression created by the advertisement. This involves factors such as, but not limited to, the size, color and prominence of type used to describe benefits. The word "format" means the arrangement of the text and the captions.

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

Guideline 7 (B).

Section 7, Subsection (B) prohibits the use of incomplete statements and words or phrases which have the tendency or capacity to mislead or deceive because of the reader's unfamiliarity with insurance terminology. Therefore, words, phrases and illustrations used in an advertisement must be clear and unambiguous and, if the advertisement uses insurance terminology, sufficient description of a word, phrase or illustration shall be provided by definition or description in the context of the advertisement. As implied in Guideline 7 (A), distinctly different levels of comprehension of the subscribers of various publications should be anticipated.

Guideline 8 (A) (1).

The following examples are illustrations of the prohibitions created by Section 8, Subsection (A) (1):

1. An advertisement which describes any benefits that vary by age must disclose that fact.
2. An advertisement which uses a phrase such as "no age limit", if benefits or premiums vary by age or if age is an underwriting factor, must disclose that fact.
3. Advertisements, applications, requests for additional information and similar materials are unacceptable if they state or imply that the recipient has been individually selected to be offered insurance or has had his eligibility for such insurance individually determined in advance when the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.
4. Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population, or that a particular segment of the population are acceptable risks, when such distinctions are not maintained in the issuance of policies, are not acceptable.
5. Advertisements for group or franchise group plans which provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless such is the fact.
6. It is unacceptable to use terms such as "enroll" or "join" to imply group or blanket insurance coverage when such is not the fact.
7. Any advertisement which contains statements such as "anyone can apply", or "anyone can join", other than with respect to a guaranteed issue policy for which administrative procedures exist to assure that the policy is issued within a reasonable period of time after the application is received by the insurer.
8. An advertisement which states or implies immediate coverage of a policy is unacceptable unless suitable administrative procedures exist so that the policy is issued within fifteen (15) working days after the application is received by the insurer.

9. Any advertisement which contains statements such as "here is all you do to apply", "simply" or "merely" to refer to the act of applying for a policy which is not a guaranteed issue policy is unacceptable unless it refers to the fact that the application is subject to acceptance or approval by the insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

18. An advertisement which fails to disclose that the definition of "hospital" does not include a nursing home, convalescent home or extended care facility, as the case may be, is unacceptable.

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

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

(a) The advertisement refers to a total benefit maximum limit payable under the policy in any headline, lead-in or caption without also in the same headline, lead-in or caption specifying the applicable daily limits and other internal limits;

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

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

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

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

23. When a range of benefit levels 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. Language which implies that the insured may select the benefit level at the time of filing claims is unacceptable.

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

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

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

27. Advertisements for policies whose premiums are modest because of their limited coverage or limited amount of benefits shall not describe premiums as "low", "low cost", "budget" or use qualifying words of similar import. This rule also prohibits the use of words such as "only" and "just" in conjunction with statements of premium amounts when used to imply a bargain.

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

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

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

31. An advertisement which implies that a common type of policy or a combination of common benefits is "new", "unique", "a bonus", "a breakthrough", or is otherwise unusual is unacceptable. Also, the addition of a novel method of premium payment to an otherwise common plan of insurance does not render it "new".

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

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

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

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

36. A television, radio, mail or newspaper advertisement or lead-generating device which is designed to produce leads either by use of a coupon a request to write or to call the company or a subsequent advertisement prior to contact must include information disclosing that an agent may contact the applicant if such is the fact.

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

Guideline 8 (A) (2).

Section 8, Subsection (A) (2) recognizes that certain words and phrases in advertising may have a tendency to mislead the public as to the extent of benefits under an advertised policy. Consequently, such terms (and those specified in the rule do not represent a comprehensive list but only examples) must be used with caution to avoid any tendency to exaggerate benefits and must not be used unless the statement is literally true in every instance. The use of the following phrases based on such terms or having the same effect must be similarly restricted: "pays hospital, surgical, etc., bills", "pays dollars to offset the cost of medical care", "safeguards your standard of living", "pays full coverage", "pays complete coverage", "pays for financial needs", "provides for replacement of your lost paycheck", "replaces income" or "emergency paycheck". Other phrases may or may not be acceptable depending upon the nature of the coverage being advertised. For example, the phrase "this policy will help to replace your income" is acceptable in advertising for loss-of-time coverage but is unacceptable in advertising for hospital confinement (including "hospital indemnity") coverage.

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

Guideline 8 (A) (4).

Negative features must be accurately set forth. Any limitation on benefits precluding preexisting conditions also must be restated under a caption concerning exclusions or limitations, notwithstanding that the preexisting condition exclusion has been disclosed elsewhere in the advertisement. (See Guideline 8 (C) for additional comments on preexisting conditions.)

Guideline 8 (A) (5).

Section 8, Subsection (A) (5) should be applied in conjunction with Section 13. Phrases such as "we cut costs to the bone" or "we deal direct with you so our costs are lower" shall not be used.

Guideline 8 (A) (6).

The words, phrases, illustrations and concepts listed are illustrations of the words, phrases, illustrations and concepts prohibited by Section 8, Subsection (A) (6) which creates the impression of a profit or gain to be realized by the insured when hospitalized.

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

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

Although Section 8, Subsection (A) (6) prohibits the use of the phrase "tax free", it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of disability benefits. The IRS rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits and are not afforded the same favorable tax treatment as premiums for expense incurred hospital, medical and surgical benefit coverages. (Internal Revenue Service, Rev. Rul. 68-451 and Rev. Rul. 69-154.) Prominence either by caption, lead-in, boldface or large type shall not be given in any manner to any statements relating to the tax status of such benefits.

#### Guideline 8 (B) (1).

An advertisement which is an invitation to contract as defined in Section 5, Subsection (J) must recite the exceptions, reductions, and limitations as required by the rule and in a manner consistent with Section 6.

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

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

#### Guideline 8 (B) (2).

Section 8, Subsection (B) (2) imposes the same disclosure standards as the preceding paragraph with respect to policy provisions providing for waiting, elimination, probationary or similar time periods between the effective date of the policy and the effective date of coverage under the policy or at a time period between the date a loss occurs and the date benefits begin to accrue for such loss. The guideline for Section 8, Subsection (B) (1) is equally applicable to this subsection. Where a policy has waiting, elimination, probationary or other such time periods, such provisions must be stated in negative terms. This requirement is comparable to that contemplated in Section 8, Subsection (A) (4) as to exceptions, reductions and limitations.

#### Guideline 8 (B) (3).

Section 8, Subsection (B) (3) is similar to Section 8, Subsection (A) (4) and requires a fair and accurate description of exceptions, limitations and reductions in a manner which does not minimize, render obscure or otherwise make them appear unimportant.

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

#### Guideline 8 (C) (1).

Section 8, Subsection (C) (1) imposes the same disclosure standards with respect to preexisting condition provisions as noted in Guideline 8 (B) (1). The comments under that guideline are equally applicable to this subsection of the rule since the preexisting conditions provision is an exception under the rule.

Section 8, Subsection (C) (1) implements the objective of Section 8, Subsection (A) (4) by requiring in negative terms a description of the effect of a preexisting condition exclusion because such an exclusion is a restriction on coverage. This subdivision also prohibits the use of the phrase "preexisting condition" without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time limit (such as a reduction from three (3) years to two (2) years or to one (1) year) as an affirmative benefit. The words "appropriate definition or description" mean that the term "preexisting condition" must be defined as it is used by the company's claims department or other claims administrations.

#### Guideline 8 (C) (2).

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

Use of a phrase such as "guaranteed issue" or "automatic issue", if the policy excludes preexisting conditions for a certain period, must be accompanied by a statement disclosing that fact in a manner which does not minimize, render obscure, or otherwise make it appear unimportant and is otherwise consistent with Section 6.

#### Guideline 9.

Section 9 imposes the same disclosure standards with respect to policy provisions relating to renewability, cancellability and termination, modification of benefits, losses or premiums because of age or otherwise as stated in Guideline 8 (B) (1). The comments in that guideline are equally applicable to Section 9.

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

Section 9 also requires a statement of the qualifying conditions which constitute limitations on the permanent nature of the coverage. These customarily fall into three categories: (1) age limits, (2) reservation of a right to increase premiums, and (3) the establishment of aggregate limits. For example, "non-cancellable and guaranteed renewable" does not fulfill the requirement of the rule if the policy contains a terminal age of sixty-five (65). In such a case, a proper statement would be "non-cancellable and guaranteed renewable to age sixty-five". If a guaranteed renewable policy reserves the right to increase premiums, the statement must be expanded into language similar to "guaranteed renewable to age sixty-five but the company reserves the right to increase premium rates on a class basis". If the contract contains an aggregate limit after which no further benefits are payable, the above statement must be amplified with the phrase "subject to a maximum aggregate amount of \$50,000" or similar language. A policy may have one (1) or more of the three (3) basic limitations and an advertisement must describe each of those which the policy contains. Over fifty percent (50%) of new individual policy issues are guaranteed renewable; therefore, the fact that a policy is guaranteed renewable shall not be exaggerated.

Section 9 also requires the disclosure of any modification of benefits or losses covered because of age or for other reasons. Provisions for reduction of benefits at stated ages must be set forth. For example, a policy may contain a provision which reduces benefits fifty percent (50%) after age sixty (60) although it is renewable to age sixty-five (65). Such a reduction would have to be set forth. Also, a provision for the elimination of certain hazards at any specific ages or after the policy has been in force for a specified time would have to be set forth.

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

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

#### Guideline 10 (A).

Section 10, Subsection (A) must be applied in conjunction with Section 11 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 10 (B).

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

#### Guideline 10 (C).

Section 10, Subsection (C) requires both that approval or endorsement of a policy by an individual, group of individuals, society, association, or other organization be factual and that any proprietary relationship between the sponsoring or endorsing organization and the insurer be disclosed. For example, if the dividend under an association group case is payable to the association, disclosure of that fact is required. Also, if the insurer or an officer of the insurer formed or controls the association, that fact must be disclosed. This guideline also applies to Section 10, Subsection (E).

#### Guideline 11 (A).

Section 11, Subsection (A) prohibits the use of statistics in a manner which is misleading and deceptive. This rule requires the disclosure of all relevant facts and prohibits the use of irrelevant facts.

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

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

#### Guideline 11 (C).

Section 11, Subsection (C) does not require that statistics for Arkansas be used since such statistics as hospital charges and average stays may vary from state to state. When nationwide statistics are used such fact should be noted as such unless the statistics on the particular point are substantially the same in Arkansas. Statistics may be used only if they are credible.

#### Guideline 13.

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

#### Guideline 14 (A).

Section 14, Subsection (A) prohibits advertisements which imply that an insurer is licensed beyond the limits of those jurisdictions where it is actually licensed. An advertisement which contains testimonials from persons who reside in a state in which the insurer is not licensed or which refers to claims of persons residing in states in which the insurer is not licensed implies licensing in those states and therefore is in violation of this rule unless the advertisement states that the insurer is not licensed in those states.

#### Guideline 14 (B).

Although Section 14, Subsection (B) permits a reference to an insurer being licensed in a state where the advertisement appears, it does not allow exaggeration of the fact of such licensing nor does it permit the suggestion that competing insurers may not be so licensed because, in most states, an insurer must be licensed in the state to which it directs its advertising. Terms such as "official", or words of similar import, used to describe any policy or application form are not permissible because of the potential for deceiving or misleading the public.

#### Guideline 15.

Section 15 recognizes the existence of holding companies. The requirement that the advertisement refer to the policy form number is applicable only to advertisements of individual and franchise policies which are invitations to contract.

#### Guideline 16.

Section 16 prohibits the use of representations to any segment of the population that a particular policy or coverage is available only to that or similar segments of the population as preferred risks when actually such policy or coverage is available to members of the public at large at the same rates. The rule prohibits an advertisement labeled "Now for Readers of X Magazine".

Guideline 17 (A) (1).

Section 17, Subsection (A) (1) prohibits advertising representing that a product is offered on an introductory, initial, special offer basis or otherwise which (1) will not be available later; or (2) is available only to certain individuals, unless such is the fact. This rule prohibits the repetitive use of such advertisements. Where an insurer uses enrollment periods as the usual method of advertising these policies, the rule prohibits describing an enrollment period as a special opportunity or offer for the applicant.

Guideline 17 (A) (2).

Section 17, Subsection (A) (2) restricts the repetitive use of enrollment periods. The requirement of reasonable closing dates and waiting periods between enrollment periods was adopted to eliminate the abuses which formerly existed. The rule does not limit just the use of enrollment periods. It requires that a particular insurance product offered in an enrollment period through any advertising media, including the prepared presentations of agents, cannot be offered again in Arkansas until three (3) months from the close of the enrollment period have expired. Thus, an insurer must choose whether to use enrollment periods or open enrollment for a product. (See Section 17, Subsection (A) (4) for definitions of "a particular insurance product.")

Section 17, Subsection (A) (2) does not prohibit multiple advertising during an enrollment period through any and all media published or transmitted within this state as long as the enrollment periods for all such advertisements have the same expiration date.

This section does not prohibit the solicitation of members of a group or association for the same product even though there has not been a lapse of three (3) months since the close of a preceding enrollment period which was open to the general public for the same product.

Section 17, Subsection (A) (2) does not require separation by three (3) months of enrollment periods for the same insurance product in Arkansas if the advertising material is directed by an admitted insurer to persons by direct mail on the basis that a common relationship exists with an entity, such as a bank and its depositors, a department store to its charge account customers or an oil company to its credit card holders, and more than one (1) of such organizations is sponsoring such insurance product at different times. However, the three (3) month rule does apply to one (1) specific sponsor to the same person in Arkansas on the basis of their status as customers of that one (1) specific entity only.

Guideline 17 (A) (4).

This rule defines the meaning of "a particular insurance product" in Section 17, Subsections (A) (2) and (A) (4) and prohibits advertising of products having minor variations, such as different elimination periods or different amounts of daily hospital indemnity benefits, in a succession of enrollment periods.

Guideline 18.

Section 18 is closely related to the requirements of Section 11 concerning the use of statistics. The rule prohibits insurers which have been organized for only a brief period of time advertising that they are "old" and also prohibits the use of illustrations of a "home office" building in a manner which is misleading with respect to the actual size and magnitude of the insurer. Also, the occupations of the persons comprising the insurer's board of directors or the public's familiarity with their names or reputations is irrelevant and must not be emphasized. The preponderance of a particular occupation or profession among the board of directors of an insurer does not justify the advertisement of a plan of insurance offered to the general public as insurance designed or recommended by members of that occupation or profession. For example, it is unacceptable for an insurance company to advertise a policy offered to the general public as "the physicians' policy" or "the doctor's plan" simply because there is a preponderance of physicians or doctors on the board of directors of the insurer. The rule prohibits the use of a recommendation of a commercial rating system unless the purpose, meaning and limitations of the recommendation are clearly indicated.

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Lee Douglass, Insurance Commissioner

August 2, 1991

Date