

ADVERTISEMENTS OF ACCIDENT AND SICKNESS INSURANCE MODEL REGULATION

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Section 1. Purpose

The purpose of the Advertisements of Accident and Sickness Insurance Model Regulation is to establish minimum criteria to assure proper and accurate description and to protect prospective purchasers with respect to the advertisement of accident and sickness insurance in the same manner as the regulation governing advertisements of Medicare supplement insurance. This regulation assures the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as accident and sickness insurance by the establishment of standards of conduct in the advertising of accident and sickness insurance in a manner that 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. Applicability

- A. This regulation shall apply to individual and group accident and sickness insurance (except Medicare supplement insurance or any other insurance that is covered by a separate state statute) “advertisement,” as that term is defined in Section 3B, G, H and I unless otherwise specified in this regulation, which the insurer knows or reasonably should know is intended for presentation, distribution or dissemination in this state when the presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker, producer or solicitor, as those terms are defined in the Insurance Code of this state.

Drafting Note: This regulation applies to group and blanket as well as individual accident and sickness insurance. Certain distinctions, however, are applicable to these categories. Among these distinctions is the insureds' level of familiarity with insurance and insurance terminology, a factor that is covered in Section 5C.

- 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 of the insurer's advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are advertised.
- C. Advertising materials that are reproduced in quantity shall be identified by form numbers or other identifying means. The identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications or other materials used by the insurer.

Section 3. Definitions

- A. (1) "Accident and sickness insurance policy" means a policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement that provides accident or sickness benefits or medical, surgical or hospital 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. An accident and sickness insurance policy does not include a Medicare supplement insurance policy, or any other type of accident and sickness insurance with advertising guidelines covered by a separate statute.
- (2) The language "except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts" means it does not include disability, waiver of premium and double indemnity benefits included in life insurance, endowment or annuity contracts or contracts supplemental to the above contracts that contain only provisions that:
 - (a) Provide additional benefits in case of death or dismemberment or loss of sight by accident; or
 - (b) Operate to safeguard the contracts against lapse or to give a special surrender value, 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.
- B. (1) "Advertisement" means:
 - (a) Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other Internet displays or communications, other forms of electronic communications, 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, such as circulars, leaflets, booklets, depictions, illustrations, form letters and lead-generating devices of all kinds; and

- (c) Prepared sales talks, presentations and material for use by agents, brokers, producers and solicitors whether prepared by the insurer or the agent, broker, producer or solicitor.
- (2) The definition of “advertisement” includes advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements.
- (3) The definition of advertisement extends to the use of all media for communications to the general public, to the use of all media for communications to specific members of the general public, and to the use of all media for communications by agents, brokers, producers and solicitors.
- (4) The definition of advertisement does not include:
 - (a) Material 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 the policyholders to increase or expand coverages;
 - (e) Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;
 - (f) Court-approved material ordered by a court to be disseminated to policyholders; or
 - (g) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged; provided that the announcement clearly indicates that it is preliminary to the issuance of a booklet and that the announcement does not describe the specific benefits under the contract or program nor describe advantages as to the purchase of the contract or program. This does not prohibit a general endorsement of the program by the sponsor.
- C. “Certificate” means a statement of the coverage and provisions of a policy of group accident and sickness insurance, which has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached.
- D. “Exception” means 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.

- E. “Insurer” means an 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 that is defined as an insurer in the insurance code of this state, and is engaged in the advertisement of itself or an accident and sickness insurance policy.
- F. “Institutional advertisement” means an advertisement having as its sole purpose the promotion of the reader’s, viewer’s or listener’s interest in the concept of accident and sickness insurance, or the promotion of the insurer as a seller of accident and sickness insurance.
- G. “Invitation to contract” means an advertisement that is neither an invitation to inquire nor an institutional advertisement.
- H. “Invitation to inquire” means:
- (1) An advertisement having as its objective the creation of a desire to inquire further about accident and sickness insurance and that is limited to a brief description of the loss for which benefits are payable but may contain:
 - (a) The dollar amount of benefits payable; and
 - (b) The period of time during which benefits are payable.
 - (2) An invitation to inquire may not refer to cost.
 - (3) An invitation to inquire 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].”
- I. “Lead-generating device” means any communication directed to the public that, 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 accident and sickness insurance.
- J. “Limitation” means a provision that restricts coverage under the policy other than an exception or a reduction.
- K. “Limited benefit health coverage” shall have the same meaning as defined in [insert reference to state law equivalent to Section 7L of the NAIC Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Act].
- L. “Person” means a natural person, association, organization, partnership, trust, group, discretionary group, corporation or any other entity.
- M. “Prominently” or “conspicuously” means that the information to be disclosed prominently or conspicuously will be presented in a manner that is noticeably set apart from other information or images in the advertisement.

- N. “Reduction” means a provision that reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable and the reduction has not been used.

Section 4. Method of Disclosure of Required Information

All information, exceptions, limitations, reductions and other restrictions required to be disclosed by this regulation shall be set out conspicuously and in close conjunction to the statements to which the information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading. This regulation permits, but is not limited to, the use of either of the following methods of disclosure:

- A. Disclosure in the description of the related benefits or in a paragraph set out in close conjunction with the description of policy benefits; or
- B. Disclosure 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 the following are prohibited because they do not provide adequate notice of the significance of the material: “Extent of Coverage,” “Only these Exclusions,” or “Minimum Limitations.”

Drafting Note: In considering whether an advertisement complies with the disclosure requirements of this regulation, the regulation must be applied in conjunction with the form and content standards contained in Section 5.

Section 5. Form and Content of Advertisements

- A. The format and content of an advertisement of an accident or sickness insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Format means the arrangement of the text and the captions.
- B. Distinctly different advertisements are required for publication in different media, such as newspapers or magazines of general circulation as compared to scholarly, technical or business journals and newspapers. Where an advertisement consists of more than one piece of material, each piece of material must, independent of all other pieces of material, conform to the disclosure requirements of this regulation.
- C. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create within the segment of the public to which it is directed.

Drafting Note: These subsections must be applied in conjunction with Sections 1 and 4. These subsections refer specifically to format and content of the advertisement and the overall impression created by the advertisement. This involves factors such as the size, color and prominence of type used to describe benefits.

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

Drafting Note: This subsection prohibits the use of incomplete statements and words or phrases that 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 stated in Subsection C, distinctly different levels of comprehension of the subscribers of various publications may be anticipated.

- E. An insurer shall clearly identify its accident and sickness insurance policy as an insurance policy. A policy trade name shall 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.
- F. An insurer, agent, broker, producer, solicitor or other person shall not solicit a resident of this state for the purchase of accident and sickness insurance in connection with or as the result of the use of advertisement by the 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 the person or the true purpose of the advertisement; or
 - (2) Otherwise violates the provisions of this regulation.
- G. An insurer, agent, broker, producer, solicitor or other person shall not solicit residents of this State for the purchase of accident and sickness insurance through the use of a true or fictitious name that is deceptive or misleading with regard to the status, character or proprietary or representative capacity of the person or the true purpose of the advertisement.

Section 6. Advertisements of Benefits Payable, Losses Covered or Premiums Payable

- A. Covered Benefits.
 - (1) The use of deceptive words, phrases or illustrations in advertisements of accident and sickness insurance is prohibited.

Drafting Note: This broad provision may be deleted if your state has enacted an Unfair Trade Practices Act that contains the same prohibitions.

- (2) An advertisement that fails to state clearly the type of insurance coverage being offered is prohibited.
- (3) An advertisement shall not omit information or use words, phrases, statements, references or illustrations if the omission of information or use of 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.

- (4) An advertisement shall not 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 that exaggerates a benefit beyond the terms of the policy.

Drafting Note: An advertisement shall not state or imply by word, phrase or illustration that the benefits being offered will supplement any other insurance policy, health benefit plan, or governmental plan if that is not the fact.

- (5) An advertisement of a hospital or other similar facility confinement benefit that makes reference to the benefit being paid directly to the policyholder is prohibited unless, in making the 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 regulation 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 may be used so long as the advertisement indicates that it is payable to the insured or someone designated by the insured.
- (6) (a) An advertisement for basic hospital expense coverage, basic medical-surgical expense coverage, basic hospital/medical-surgical expense coverage, hospital confinement indemnity coverage, accident only coverage, specified disease coverage, specified accident coverage or limited benefit health coverage or for coverage that covers only a certain type of loss is prohibited if:
- (i) 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;
 - (ii) The advertisement states a 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
 - (iii) The advertisement prominently displays a total benefit limit that would not, as a general rule, be payable under an average claim.
- (b) This paragraph does not apply to individual major medical expense coverage, individual basic medical expense coverage, or disability income insurance.
- (7) Advertisements that emphasize total amounts payable under hospital, medical or surgical accident and sickness insurance coverage or other benefits in a policy, such as benefits for private duty nursing, are prohibited unless the actual amounts payable per day for the indemnity or benefits are stated.

- (8) Advertisements that include examples of benefits payable under a policy shall not use examples in a way that implies that the maximum payable benefit payable under the policy will be paid, when less than maximum benefits are paid in an average claim.
- (9) When a range of benefit levels is set forth in an advertisement, it shall be clear that the insured will receive only the benefit level written or printed in the policy selected and issued. Language that implies that the insured may select the benefit level at the time of filing claims is prohibited.
- (10) Language in an advertisement that 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 prohibited.
- (11) Advertisements for policies with premiums that 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. The use of words such as “only” and “just” in conjunction with statements of premium amounts when used to imply a bargain are prohibited.
- (12) Advertisements that state or imply that premiums will not be changed in the future are prohibited unless the advertised policies expressly provide that the premiums will not be changed in the future.
- (13) An advertisement for a policy that does not require the premium to accompany the application shall not overemphasize that fact and shall clearly indicate under what circumstances coverage will become effective.
- (14) An advertisement that exaggerates the effects of statutorily mandated benefits or required policy provisions or that implies that the provisions are unique to the advertised policy is prohibited.

Drafting Note: For example, the phrase, “money back guarantee” is an exaggerated description of the free look right to examine the policy and is prohibited.

- (15) An advertisement that implies that a common type of policy or a combination of common benefits is “new,” “unique,” “a bonus,” “a breakthrough,” or is otherwise unusual is prohibited. The addition of a novel method of premium payment to an otherwise common plan of insurance does not render it new.
- (16) Language in an advertisement that states or implies that each member under a family contract is covered as to the maximum benefits advertised, where that is not the fact, is prohibited.
- (17) An advertisement that contains statements such as “anyone can apply,” or “anyone can join,” other than with respect to a guaranteed issue policy for which administrative procedures exist to assure that the policy is issued within a reasonable period of time after the application is received by the insurer, is prohibited.
- (18) An advertisement that states or implies immediate coverage of a policy is prohibited unless administrative procedures exist so that the policy is issued within fifteen (15) working days after the insurer receives the completed application.

- (19) An advertisement that contains statements such as “here is all you do to apply,” or “simply” or “merely” to refer to the act of applying for a policy that is not a guaranteed issue policy is prohibited unless it refers to the fact that the application is subject to acceptance or approval by the insurer.
- (20) An advertisement of accident and sickness 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 the policies is a substantial cost in the marketing by direct response.
- (21) Applications, request forms for additional information and similar related materials are prohibited if they resemble paper currency, bonds, stock certificates, etc., or use any name, service mark, slogan, symbol or device in 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.

Drafting Note: Illustrations that depict paper currency or checks showing an amount payable are deceptive and misleading.

- (22) An advertisement that implies in any manner that the prospective insured may realize a profit from obtaining hospital, medical or surgical insurance coverage is prohibited.
- (23) An advertisement that uses words such as “extra,” “special” or “added” to describe a benefit in the policy is prohibited. No advertisement of a benefit for which payment is conditioned 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 these 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.

Drafting Note: Although the regulation prohibits the use of the phrase “tax free,” it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service (IRS) regulations applicable to the taxation of accident and sickness benefits. The IRS regulations provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same regulations 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. (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 statements relating to the tax status of the benefits.

Paragraphs 21 to 23 reflect the prohibition of advertising language that creates the impression of a profit or gain to be realized by the insured when enrolling in certain kinds of coverage. For example, 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.

- (24) An advertisement of a hospital or other similar facility confinement benefit shall not 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 the statements of the 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, the limit shall appear in the advertisement.

- (25) An advertisement of a policy covering only one disease or a list of specified diseases shall not 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.
- (26) An advertisement that is an invitation to contract for a specified disease policy that provides lesser benefit amounts for a particular subtype of disease, shall clearly disclose the subtype and its benefits. This provision shall not apply to institutional advertisements.
- (27) An advertisement of a specified disease policy providing expense benefits shall not use the term “actual” when the policy only pays up to a limited amount for expenses. Instead, the term “charges” or substantially similar language should be used that does not create the misleading impression that there is full coverage for expenses.
- (28) An advertisement that describes any benefits that vary by age shall disclose that fact.
- (29) An advertisement that uses a phrase such as “no age limit,” if benefits or premiums vary by age or if age is an underwriting factor, shall disclose that fact.

Drafting Note: This section 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, the terms (and those specified in the regulation do not represent a comprehensive list but are only examples) must be used with caution to avoid a 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 the 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 prohibited in advertising for hospital confinement (including “hospital indemnity”) coverage. In any advertisement the phrase “no lifetime maximum” may not be repeated under each policy benefit or otherwise overemphasized. However, this does not preclude the use of the general statement in an advertisement that describes the manner in which any lifetime maximum is applied under the coverage.

- (30) A television, radio, mail or newspaper advertisement or lead-generating device that is designed to produce leads either by use of a coupon, a request to write or to call the company or a subsequent advertisement prior to contact shall include information disclosing that an agent may contact the applicant.
- (31) Advertisements, applications, requests for additional information and similar materials are prohibited if they state or imply that the recipient has been individually selected to be offered insurance or has had his or her eligibility for the 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.
- (32) An advertisement, including invitations to inquire or invitations to contract, shall not employ devices that are designed to create undue fear or anxiety in the minds of those to whom they are directed. Examples of prohibited 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 the statistics are drawn;

Drafting Note: 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 exaggeration of the importance of diseases rarely or seldom found in the class of persons to whom the policy is offered;
- (c) The use of phrases such as “the finest kind of treatment,” implying that the treatment would be unavailable without insurance;
- (d) The reproduction of newspaper articles, magazine articles, information from the Internet or other similar published material containing irrelevant facts and figures;
- (e) The use of images that unduly emphasize automobile accidents, disabled persons or persons confined in beds who are in obvious distress, persons receiving hospital or medical bills or persons being evicted from their homes due to their medical bills;
- (f) The use of phrases such as “financial disaster,” “financial distress,” “financial shock,” or another phrase implying that financial ruin is likely without insurance is only permissible in an advertisement for major medical expense coverage, individual basic medical expense coverage or disability income coverage, and only if the phrase does not dominate the advertisement;
- (g) The use of phrases or devices that unduly excite fear of dependence upon relatives or charity; and
- (h) The use of phrases or devices that imply that long sicknesses or hospital stays are common among the elderly.

Drafting Note: This regulation prohibits words or phrases that 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.”

B. Exceptions, Reductions and Limitations

- (1) 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 the policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of the limitations, exceptions and reductions of the policy offered.
- (2) An advertisement that is an invitation to contract shall disclose those exceptions, reductions and limitations affecting the basic provisions of the policy.

- (3) 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 the loss, an advertisement that is subject to the requirements of the preceding paragraph shall prominently disclose the existence of the periods.

Drafting Note: This paragraph imposes the same disclosure standards as Paragraph (1) 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 the loss. Where a policy has waiting, elimination, probationary or other limiting time periods, the provisions must be stated in negative terms.

- (4) 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.”

Drafting Note: The regulation requires a fair and accurate description of exceptions, limitations and reductions in a manner that 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 prohibited, nor is “Does not pay for the first four days in hospital for sickness, but pays for accident from first day.”

- (5) An advertisement that is an invitation to contract that fails to disclose the amount of any deductible or the percentage of any coinsurance factor is prohibited.
- (6) An advertisement for loss-of-time coverage that is an invitation to contract that sets forth a range of amounts of benefit levels is prohibited 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 that is the fact.
- (7) An advertisement that refers to “hospitalization for injury or sickness” omitting the word “covered” when the policy excludes certain sicknesses or injuries, or that refers to “whenever you are hospitalized,” “when you go to the hospital” 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 prohibited. 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 is prominently set forth.
- (8) An advertisement that fails to disclose that the definition of “hospital” does not include certain facilities that provide institutional care such as a nursing home, convalescent home or extended care facility, when the facilities are excluded under the definition of hospital in the policy, is prohibited.
- (9) The term “confining sickness” shall be explained in an advertisement containing the term. The 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 the 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.

Drafting Note: The term “confining sickness” is an abbreviated expression and requires explanation so as not to be misleading.

- (10) An advertisement that fails to disclose any waiting or elimination periods for specific benefits is prohibited.
- (11) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, or other policies providing benefits that are limited in nature, 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 POLICY PROVIDES LIMITED BENEFITS,” “THIS IS A CANCER ONLY POLICY,” or “THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY.”

Drafting Note: An advertisement that is an invitation to contract must recite the exceptions, reductions, and limitations as required by this regulation and in a manner consistent with Section 4. 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 Provision Law.

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 that does not minimize, render obscure or otherwise make them appear unimportant.

C. Preexisting Conditions

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

Drafting Note: This regulation requires in negative terms a description of the effect of a preexisting condition exclusion because this exclusion is a restriction on coverage. The use of the phrase “preexisting condition” without an appropriate definition or description of the term is prohibited, as well as stating a reduction in the statutory time limit (such as a reduction from three years to two years or to one year) as an affirmative benefit. The words “appropriate definition or description” mean that the term “preexisting condition” must be defined as the company’s claims department uses it.

Negative features must be accurately set forth. Any limitation on benefits including 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.

- (2) When an accident and sickness insurance policy does not cover losses resulting from preexisting conditions, an advertisement of the policy shall not state or imply that the applicant’s physical condition or medical history will not affect the issuance of the policy or payment of a claim under the policy. This regulation 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.

Drafting Note: 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 that does not minimize, render obscure, or otherwise make it appear unimportant and is otherwise consistent with Section 4.

- (3) When an advertisement contains an application form to be completed by the applicant and returned by mail, the application form shall contain a question or statement that reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant’s signature. For example, the 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] [years, months] after the issue date for a disease or physical condition that 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] [years, months] after the issue date on account of disease or physical condition that I now have or have had in the past.”

Drafting Note: Some states require approval of the application even when the application is not attached to the policy when issued. This regulation does not change the requirement. The text of this regulation should be modified to reflect the applicable regulation in the state.

Section 7. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability and Termination

- A. An advertisement that 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 that shall not minimize or render obscure the qualifying conditions.
- B. Advertisements of cancellable accident and sickness insurance policies shall state that the contract is cancellable or renewable at the option of the company, as the case may be, in language substantially similar to the following: A policy that 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,” or “This policy can be cancelled by the company at any time.”
- C. Advertisements of insurance policies that are guaranteed renewable, cancelable or renewable at the option of the company shall disclose that the insurer has the right to increase premium rates if the policy so provides.
- D. Qualifying conditions that constitute limitations on the permanent nature of the coverage shall be disclosed in advertisements of insurance policies that are guaranteed renewable, cancelable or renewable at the option of the company. Examples of qualifying conditions are (1) age limits, (2) reservation of a right to increase premiums, and (3) the establishment of aggregate limits.

- (1) Provisions for reduction of benefits at stated ages shall be set forth. For example, a policy may contain a provision that reduces benefits fifty percent (50%) after age sixty (60) although it is renewable to age sixty-five (65). Such a reduction shall 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 shall be set forth.
- (2) An advertisement for a policy that provides for step-rated premium rates based upon the policy year or the insured's attained age shall disclose the rate increases and the times or ages at which the premiums increase.

Drafting Note: This regulation 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 Section 6. This regulation requires that the qualifying conditions of renewability must be disclosed in a manner that does not minimize or render obscure the qualifying conditions of renewal. For example, "non-cancellable and guaranteed renewable" does not fulfill the requirement of the regulation if the policy contains a terminal age of sixty-five. 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 or more of the three basic limitations and an advertisement must describe each of those that the policy contains. Over fifty percent of new individual policy issues are guaranteed renewable; therefore, the fact that a policy is guaranteed renewable shall not be exaggerated. With respect to noncancellable policies and guaranteed renewable policies, the regulation requires that a summary of the policy provisions with respect to renewability be set forth and defined where appropriate. The disclosure of provisions relating to renewability requires the use of language such as "noncancellable," "noncancellable and guaranteed renewable," or "guaranteed renewable." Unless otherwise modified by law or regulation in an individual state, the use of those terms and the definitions provided shall be consistent with the definitions of those terms adopted by the National Association of Insurance Commissioners (See 1960 *Proceedings of the NAIC* I 153).

Section 8. Standards for Marketing

- A. An insurer, directly or through its agents or brokers, shall:
 - (1) Establish marketing procedures to assure that any comparison of policies by its agents or brokers will be fair and accurate;
 - (2) Establish marketing procedures assuring excessive insurance is not sold or issued, except this requirement does not apply to group major medical expense coverage and disability income coverage; and
 - (3) Establish auditable procedures for verifying compliance with this subsection.
- B. In addition to the practices prohibited in [insert reference to state law equivalent to the NAIC Unfair Trade Practices Act], the following acts and practices are prohibited:
 - (1) **Twisting.** Knowingly making any misleading representation or incomplete or fraudulent comparison of insurance policies or insurers for the purpose of inducing, or tending to induce, a person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy, or to take out a policy of insurance with another insurer;
 - (2) **High Pressure Tactics.** Employing a method of marketing that has the effect of inducing the purchase of insurance, or tends to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance; and

- (3) Cold Lead Advertising. Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section 9. Testimonials or Endorsements by Third Parties

- A. Testimonials and endorsements used in advertisements shall 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 in it, and the advertisement, including the statement, is subject to all the provisions of this regulation. When a testimonial or endorsement is used more than one year after it was originally given, a confirmation must be obtained.

Drafting Note: The regulation must be applied in conjunction with Section 10 and requires that all the statements must be genuine and not fictitious. Under the regulation, the manufacturing, substantive editing or “doctoring” of a testimonial is clearly prohibited as being false and misleading to the insurance-buying public. However, language that would be prohibited under this regulation must be edited out of a testimonial.

- 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;
 - (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;
 - (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.

Drafting Note: Reimbursement for substantial travel and entertainment expenses is also required to be disclosed; however, union scale wages required by union regulations 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.

- 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, the 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 shall be accomplished in the introductory portion of the advertisement and shall be given prominence.

Drafting Note: This regulation 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.

- D. The disclosure requirements of this regulation 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 the scale for TV or radio performances.
- E. An advertisement shall not state or imply that an insurer or an accident and sickness insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless that 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, the 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 an accident and sickness insurance policy, the specific claim data, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of four (4) years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time. The use of testimonials that do not correctly reflect the present practices of the insurer or that are not applicable to the policy or benefit being advertised is not permissible.

Section 10. 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 an insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the current and relevant facts. The advertisement shall not imply that the statistics are derived from the policy advertised unless that is the fact, and when applicable to other policies or plans shall specifically so state.
 - (1) An advertisement shall specifically identify the accident and sickness insurance policy to which statistics relate and where statistics are given that are applicable to a different policy, it shall be stated clearly that the data do not relate to the policy being advertised.
 - (2) An advertisement using statistics that 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, shall be used with extreme caution because of the potential for misleading the public. As a specific example, an advertisement for accident and sickness insurance that 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.

Drafting Note: This regulation prohibits the use of statistics in a manner that is misleading and deceptive. This regulation requires the disclosure of all relevant facts and prohibits the use of irrelevant facts. Irrelevant facts include statistics that are out-of-date and no longer current. An advertisement that states the dollar amount of claims paid must also indicate the period over which the claims have been paid. If the term “loss ratio” is used, it shall be properly explained in the context of the advertisement and, unless the state has issued a regulation otherwise defining the term, it shall be calculated on the basis of premiums earned to losses incurred and shall not be on a yearly run-off basis.

- 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 the advertisement.

Drafting Note: The regulation does not require that state-only statistics be used since statistics such as hospital charges and average stays may vary from state to state. When nationwide statistics are used the fact should be noted, unless the statistics on the particular point are substantially the same in a state to which the advertisement is directed. Statistics may be used only if they are credible. Statistics that are applicable to a broader array of illnesses or accidents than those covered under the policy cannot be used.

Section 11. Identification of Plan or Number of Policies

- A. An advertisement that uses the word “plan” without prominently identifying it as an accident and sickness insurance policy is prohibited.
- B. When a choice of the amount of benefits is referred to, an advertisement that 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.
- C. When an advertisement that is an invitation to contract refers to various benefits that may be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that the benefits are provided only through a combination of policies.

Section 12. 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 that state or imply that competing insurance coverages customarily contain certain exceptions, reductions or limitations not contained in the advertised policies are prohibited unless the exceptions, reductions or limitations are contained in a substantial majority of the competing coverages.
- C. Advertisements that 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 prohibited.

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

Section 13. Jurisdictional Licensing and Status of Insurer

- A. An advertisement that 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.

Drafting Note: This regulation prohibits advertisements that imply that an insurer is licensed beyond the limits of those jurisdictions where it is actually licensed. An advertisement that contains testimonials from persons who reside in a state in which the insurer is not licensed or that 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 regulation unless the advertisement states that the insurer is not licensed in those states.

- 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 this state or the federal government. Terms such as “official” or words of similar import, used to describe any policy or application form are prohibited because of the potential for deceiving or misleading the public.

Drafting Note: Although the regulation permits a reference to an insurer being licensed in a state where the advertisement appears, it does not allow exaggeration of the fact of the 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.

- 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 condition.

Section 14. 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 that is an invitation to contract. An advertisement shall not use a trade name, an 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 that 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.

Drafting Note: The regulation 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 that are invitations to contract.

- B. An advertisement shall not use any combination of words, symbols, or physical materials that 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 that employ words, letters, initials, symbols or other devices that are 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 the governmental agencies or the other insurers;
 - (2) That the advertiser is the same as is connected with or is endorsed by the governmental agencies or the other insurers.
- D. An advertisement shall not use the name of a state or political subdivision of a state in a policy name or description.
- E. An advertisement in the form of envelopes or stationery of any kind may not use any name, service mark, slogan, symbol or any device in 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. An advertisement may not incorporate the word “Medicare” in the title of the plan or policy being advertised unless, wherever it appears, the word is qualified by language differentiating it from Medicare. The advertisement, however, shall not use the phrase “[] Medicare Department of the [] Insurance Company,” or language of similar import.
- G. An advertisement may not imply that the reader may lose a right or privilege or benefit under federal, state or local law if he or she 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. An insurer shall not 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. Advertisements used by agents, producers, brokers or solicitors of an insurer shall 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, shall disclose that fact in the initial contact with the consumer. An agent or insurer may not use names produced from lead-generating devices that do not comply with the requirements of this regulation.

Section 15. 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 members, enjoy special rates or underwriting privileges, unless that is the fact.
- B. This regulation 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.
- C. Advertisements that 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 is an acceptable risk, when the distinctions are not maintained in the issuance of policies, are prohibited.
- D. An advertisement to join an association, trust or discretionary group that is also an invitation to contract for insurance coverage shall clearly disclose that the applicant will be purchasing both membership in the association, trust or discretionary group and insurance coverage. The insurer shall solicit insurance coverage on a separate and distinct application that requires a separate signature. The separate and distinct applications required need not be on separate documents or contained in a separate mailing. The insurance program shall be presented so as not to conceal the fact that the prospective members are purchasing insurance as well as applying for membership, if that is the case. Similarly, it is prohibited to use terms such as “enroll” or “join” to imply group or blanket insurance coverage when that is not the fact.
- E. Advertisements for group or franchise group plans that 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 that is the fact.

Drafting Note: The regulation 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 the policy or coverage is available to members of the public at large at the same rates. For example, the regulation prohibits an advertisement labeled “Now for Readers of X Magazine.”

Section 16. 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 that 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 the enrollment periods as the usual method of marketing accident and sickness 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 [insert number] 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 the enrollment period is advertised for the first time. This regulation applies to all advertising media, i.e., mail, newspapers, the Internet, radio, television, magazines and periodicals, by any one insurer. It is inapplicable to solicitations of employees or members of a particular group or association that 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.

Drafting Note: The regulation restricts the repetitive use of enrollment periods. The requirement of reasonable closing dates and waiting periods between enrollment periods was adopted to eliminate abuses that formerly existed. The regulation 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 entire state until a specified number of 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 Paragraph (4) for a definition of “a particular insurance product.”). The regulation 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 the advertisements have the same expiration date.

The regulation 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 a specified number of months since the close of a preceding enrollment period that was open to the general public for the same product. The regulation does not require separation by a specified number of 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 solicitation 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 of the organizations is sponsoring the insurance product at different times if providing the insurance under this method is not otherwise prohibited by law. However, the [insert number] month regulation does apply to one specific sponsor to the same person in this state on the basis of his or her status as a customer of that one specific entity only.

The number of months was left open in this regulation because several states permit six months; several states allow three months, and other states prohibit certain periods of enrollment. Whether the enrollment periods should be permissible and the period of time between enrollments are items on which each state should make its decision on an individual basis and each state should modify the time limit in this regulation to comply with state law.

- (3) This regulation 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 that is the fact.
- (4) The phrase “a particular insurance product” in Paragraph (2) of this subsection means an insurance policy that 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.

Drafting Note: This regulation defines the meaning of “a particular insurance product” 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.

- B. An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that 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.

Drafting Note: Some states prohibit a reduced initial premium. Section 16B does not imply that the states that prohibit an initial premium are not in conformity with the model regulation. This is an item to be decided on a state-by-state basis.

- C. Special awards, such as a “safe drivers’ award,” shall not be used in connection with advertisements of accident and sickness insurance.

Section 17. Statements about an Insurer

An advertisement shall not contain statements that 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 recommendations.

Drafting Note: This is closely related to the requirements of Section 10 concerning the use of statistics. The regulation prohibits insurers that have been organized for only a brief period of time advertising that they are “old” and also prohibits the use of images of a “home office” building in a manner that 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 are 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 prohibited for an insurance company to advertise a policy offered to the general public as “the physician’s policy” or “the doctor’s plan” simply because there is a preponderance of physicians on the board of directors of the insurer. The regulation prohibits the use of a recommendation of a commercial rating system unless the purpose, meaning and limitations of the recommendation are clearly indicated.

Section 18. 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 an other state, with a notation attached to each advertisement that indicates the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to regular and periodical inspection by the commissioner. All of these advertisements shall be maintained in a 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 shall file with the commissioner, with its annual statement, a certificate of compliance executed by an authorized officer of the insurer that states that, to the best of the officer’s knowledge, information and belief, the advertisements that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this regulation and the insurance laws of this state as implemented and interpreted by this regulation.

Drafting Note: Where the regulation was adopted on other than January 1 of the year, the required certification that all advertisements used in the preceding annual statement year complied with the regulation cannot be given. The respective insurance departments should consider remedying the problem in the Certificate of Compliance used for the calendar year in which the regulation was adopted.

Section 19. Severability Provision

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

Section 20. Filing for Prior Review

The commissioner may, at his or her discretion, require filing of any accident and sickness insurance advertising material for review prior to use. The advertising material shall be filed by the insurer with the commissioner not less than thirty (30) days prior to the date the insurer desires to use the advertisement.

Drafting Note: This is an example of a regulation that may be used at the option of the commissioner in a state that elects to review advertisements prior to use. The NAIC takes no position on the question of whether advertising material should be subject to prior review by the commissioner.

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

1956 Proc. I 127, 130, 131-137, 148 (adopted)
1956 Proc. II 270, 301, 315 (interpretive guidelines established).
1957 Proc. I 76, 89-90, 99 (amended).
1972 Proc. I 15, 16, 555, 557, 563-580 (amended and reprinted).
1973 Proc. I 9, 11, 141, 224, 244-250 (amended and reprinted).
1974 Proc. II 8, 10, 380, 419, 420-441 (amended and reprinted).
1989 Proc. I 24-25, 702, 706-726 (amended and reprinted).
1998 Proc. 4th Quarter 16, 17, 652, 654, 688-712 (amended and reprinted).

**ADVERTISEMENTS OF ACCIDENT AND SICKNESS
INSURANCE MODEL REGULATION**

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

**ADVERTISEMENTS OF ACCIDENT AND SICKNESS
INSURANCE MODEL REGULATION**

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**ADVERTISEMENTS OF ACCIDENT AND SICKNESS
INSURANCE MODEL REGULATION**

KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. ADMIN. CODE r. 482-1-013-.01 to 482-1-013-.22 (1972/2003).
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. ADMIN. CODE § 20-6-201 (1969) (portions of model).	
Arkansas	ARK. CODE R. § 11 (1981/1991); § 41 (1989).	
California	CAL. CODE REGS. tit. 10, §§ 2535.2 to 2537.2 (1972/1973) (Includes Interpretative Guidelines).	
Colorado	COLO. CODE REGS. § 4-2-3 (1975/2014).	
Connecticut	CONN. AGENCIES REGS. §§ 38a-819-1 to 38a-819-20 (1975/1992).	
Delaware	18-1300 DEL. CODE REGS § 1302 (1973/2003).	FORMS AND BULLETIN 6 (1990/1992).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
District of Columbia		D.C. MUN. REGS. tit. 26, § 211 (1972) (Some similarities, references model).
Florida	FLA. ADMIN. CODE ANN. r. 690-150.001 to 690-150.021 (1974/2000).	FLA. ADMIN. CODE ANN. r. 690-150.201 to 690-150.219 (1993/2000) (Small employer plan advertising).
Georgia	GA. COMP. R. & REGS. 120-2-12-.01 to 120-2-12-.22 (1965/2007); 120-2-44-.08 (1989/1997).	
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. § 431:10A-310 (1989) (Medicare supplement insurance advertisements).
Idaho	IDAHO ADMIN. CODE r. 18.01.24.000 to 18.01.24.024 (1993/2007) (portions of model).	IDAHO CODE ANN. 41-1314 (1961/2011).
Illinois	ILL. ADMIN. CODE tit. 50, §§ 2002.10 to 2002.190 (1975/2014) (Includes Interpretive Guidelines).	215 ILL. COMP. STAT. 5/363a (2003) (Medicare supplement insurance advertisements).
Indiana	760 IND. ADMIN. CODE 18 (2007) (Adopts some NAIC language, some of Interpretive Guidelines).	
Iowa	IOWA ADMIN. CODE r. §§ 191-15.1 to 191-15.14 (1997/2009) (Portions of model).	IOWA CODE § 514D.5 (Medicare supplement insurance advertisements).
Kansas	KAN. ADMIN. REGS. § 40-9-100 (1982/2001) (Adopts NAIC 1999 model by reference with exceptions); § 40-4-37p.	
Kentucky	806 KY. ADMIN. REGS. 12:010 (1975).	

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Louisiana	LA. ADMIN. CODE tit. 37, §§ XI.1301 to 37:XI.1337 (Rule 3) (1973).	LA. ADMIN. CODE tit. 37, § 137 (1991) (Medicare supplement insurance advertisements).
Maine	ME.CODE R. 140 (1973).	
Maryland	MD. CODE REGS. §§ 31.15.02.01 to 31.15.02.18 (1956/2013).	
Massachusetts		211 MASS. CODE REGS. 40.01 to 40.16 (1996) (Entitled “Marketing of Insured Health Plans”) (Similar to model); 175 MASS. GEN. LAWS 110E (1973/1984).
Michigan	MICH. ADMIN. CODE R. 500.651 to R.500.669 (1975/1997).	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	MISS. CODE R. § 74-3 (1975) (Guidelines adopted by reference).	MISS. CODE REG. § 88-105 (1989) (Medicare supplement insurance advertisements).
Missouri	MO. CODE REGS. ANN. tit. 20, § 400-5.700 (1964/2003) (Incorporates the NAIC Interpretive Guidelines by reference).	MO. CODE REGS. ANN. tit. 15, § 30-53.010 (1968/2009).
Montana	NO CURRENT ACTIVITY	
Nebraska	210 NEB. ADMIN. CODE § 14 (1975/1994).	
Nevada	NEV. ADMIN. CODE §§ 689A.010 to 689A.270 (1972/2013).	NEV. ADMIN. CODE §§ 687B.225 to 687B.227 (1989/2009); BULLETIN No. 24 (1972).
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. 2601.01 to 2601.20 (1996/2008).	
New Jersey	N.J. ADMIN. CODE §§ 11:2-11.01 to 11:2-11.22 (1972/2001).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New Mexico	N.M. CODE R. §§ 18.10.4.1 to 18.10.4.23 (1997).	
New York	N.Y. COMP. CODES R. & REGS. tit. 11, §§ 215.1 to 215.18 (Regulation 34) (1973/2009).	
North Carolina	11 N.C. ADMIN. CODE 12.0516 to 12.0536 (1978/2010).	
North Dakota	N.D. ADMIN. CODE 45-06-04-01 to 45-06-04-12 (1988).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE 3901-8-07 (2009).	OHIO REV. CODE ANN. § 3923.336 (Medicare supplement insurance advertisements); OHIO ADMIN. CODE 3901-8-09 (2009/2012).
Oklahoma	OKLA. ADMIN. CODE §§ 365:10-3-1 to 365:10-3-20 (1973).	
Oregon	OR. ADMIN. R. 836-20-200 to 836-20-295 (1973/2005).	BULLETIN 2009-5 (2009).
Pennsylvania	31 PA. CODE §§ 51.1 to 51.43 (1973/1976).	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I. CODE R. §§ 27-23-1201 to 27-23-1218 (1979) (Includes Interpretive Guidelines).	R.I. CODE R. § 47 (2009) (Medicare supplement insurance advertisements).
South Carolina	S.C. CODE ANN. REGS. 69-17 (1974).	
South Dakota	S.D. ADMIN. R. § 20:06:10 (1973/2012).	S.D. CODIFIED LAWS §§ 58-33A-1 to 58:33A-12 (2013).
Tennessee	TENN. COMP. R. & REGS. 0780-1-8-.01 to 0780-1-8-.20 (1974).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Texas	TEX. ADMIN. CODE §§ 21.101 to 21.122 (1981/2010) (portions of model).	
Utah	UTAH ADMIN. CODE r. 590-130 (1989/2010).	
Vermont	Vt. CODE R. § 71-1 (Revised 1973).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	14 VA. ADMIN. CODE §§ 5-90-10 to 5-90-180 (1975/2009).	
Washington	WASH. ADMIN. CODE 284-50-010 to 284-50-230 (1973/1976).	
West Virginia	W. VA. CODE R. §§ 114-10-1 to 114-10-20 (1973).	
Wisconsin	WIS. ADMIN. CODE INS. § 3.27 (1973/1999).	
Wyoming	21 WYO. CODE R. (1974/1997).	

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In June 1955 a recommendation was adopted to develop a model on advertising of accident and sickness insurance. The group appointed to undertake the drafting solicited input from the ten affected major trade associations. It was estimated that writers of well in excess of 90 percent of all health insurance premiums in the United States were represented in the drafting process. The drafting group also met with the chairman of the Federal Trade Commission, who designated five staff to work with the NAIC group. They agreed to review materials submitted to them and render unofficial comments and suggestions. The group redrafted the model seven times and considered input from 70 individuals. Prior to adoption a public hearing was held, with 200 people in attendance. **1956 Proc. I 128-130.**

The recommendation of the drafting subcommittee was to adopt the model regulation and to urge each state insurance commissioner to adopt the same in the form recommended in his state. The drafters also recommended development of an interpretive guide. **1956 Proc. I 130-131.**

The drafters of the interpretive guideline expressed the desire that the guide and all its detail should be considered the opinion of the members of the committee, and should not be adopted as an official recommendation of the NAIC, but should be used as a reference. **1956 Proc. II 300.**

An industry advisory group was appointed to review the model and make recommendations to regulators. The group opined that the regulation was still viable and responsive to most criticisms directed at health insurance advertising. The group listed a number of criticisms they had heard and decided what action to take to address each concern. **1972 Proc. I 557-558.**

When the model was amended late in 1971, a preamble containing basic principles of interpretation was added (and deleted in 1999). In addition the interpretive guidelines were printed following each section. **1972 Proc. I 563-564**

In 1972 an interested party criticized the action taken the prior year, saying that it fell short of expectations and had not resulted in the hoped-for uniformity. Individual departments issued new or amended rules, resulting in a maze of conflicting, duplicative and inconsistent rules that repudiated one of the purposes of the NAIC, that of encouraging uniformity in department rulings. **1973 Proc. I 226.**

Another interested party said that variations in state advertising rules would make it impossible for insurers doing interstate business. He gave examples of conflicting requirements and opined that the non-uniform condition of the regulation of insurance advertising resulted in greatly increased costs. He said that continued state regulation of insurance must be uniform and must not impose insuperable burdens upon the interstate business of insurance. **1973 Proc. I 239-240.**

The NAIC membership and interested parties spent a great deal of time in 1973 and 1974 developing historical notes and revising the interpretive guidelines that had been developed (but not published) in 1956. **1974 Proc. I 313-315.**

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The Industry Advisory Committee persisted in its view that the Interpretive Guidelines were a necessity for the practical application of the rules by both regulators and industry. They suggested that it was beneficial to have as many practical problems of interpretation identified and resolved as possible. **1974 Proc. I 339.**

The model was amended in 1988, to be consistent with the NAIC Model Rules Governing Advertisements of Medicare Supplement Insurance. **1988 Proc. II 569.**

The next time amendments were discussed was in 1997, when regulators reviewed a number of models and recognized that amendments were necessary in response to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). **1997 Proc. 3rd Quarter II 1278.**

A small group of regulators was appointed to evaluate recommendations for changes to the model, adding regulatory oversight for group products and modernizing the model. **1997 Proc. 4th Quarter II 835.**

The drafting group made some changes to deal with the marketing of limited benefit plans. The chair noted that the rules governing advertising were an integral part of the group's original concerns in insuring that consumers were not misled into buying much less coverage than they believed they were buying. **1998 Proc. 1st Quarter 809.**

When amendments were being discussed in 1998, the drafters recommended that the prescriptive provisions of the guidelines should be incorporated in the regulation itself to ensure their enforceability. Explanations in the guidelines were inserted as drafting notes. **1998 Proc. 2nd Quarter II 758.**

Section 1. Purpose

This section was added to the model in 1972. An early draft stated that the purpose was to provide "complete" disclosure. An interested party suggested this requirement exceeded the authority of the Unfair Trade Practices Act, which prohibited false, misleading or deceptive advertising. The word "complete" could be interpreted to go beyond the information necessary to make an advertisement not misleading. The draft was changed to require truthful and adequate disclosure. **1973 Proc. I 227, 244.**

The purpose section was totally redrafted during the development of the 1988 amendments. **1989 Proc. I 707.**

When amendments were next considered, the drafters agreed to remove the preamble and put any necessary information from the preamble into the purpose section. **1998 Proc. 2nd Quarter II 758, 789.**

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Section 2. Applicability

This section was added with the 1972 amendments. **1973 Proc. I 244.**

A. An interested party commented that the 1972 language seemed to contain a conflict between Subsection A and Subsection B. Subsection A talked about “when the presentation, distribution or dissemination” was made or controlled by the insurer, implying that if the insurer did not have control, the rules did not apply. Yet Subsection B stated that the insurer should at all times maintain control. Prior to adoption, the reference to control in Subsection A was deleted. **1973 Proc. I 227, 244.**

Historical notes written in 1973 said the rules applied to invitations to contract, invitations to inquire, and institutional advertising; however, it was recognized that there were distinctions that applied to these categories of advertisements. **1973 Proc. II 438.**

After advertising rules specific to Medicare supplement were adopted in 1987, a parenthetical phrase was added to clarify that these rules no longer applied. **1989 Proc. I 707.**

The phrase “which the insurer knows or reasonably should know” was added in 1988. **1989 Proc. I 707.**

When amendments were being developed in 1998, the drafters agreed that the guidelines applied to both individual and group coverage and made a modification to Subsection A to clarify the point and added a drafting note. **1998 Proc. 2nd Quarter II 758.**

B. An interested party opined that it did not seem equitable that the insurer should bear the ultimate responsibility when an agent or broker acted contrary to the directions of the company. He suggested that an affirmative burden could be placed on insurers to control their advertising and still allow fault to be placed on the agent. The wording was not changed in response to the 1972 comment, and remains substantially the same. **1973 Proc. I 227, 244.**

Section 3. Definitions

A. Subsection A was added during the 1998 redraft of the model. **1998 Proc. 4th Quarter II 689.**

B. The definition was revised in 1998 to include Internet advertisements. **1998 Proc. 2nd Quarter II 758, 790.**

The drafting group agreed to tighten up the language of Paragraph (4)(g) so that general announcements to groups were considered advertisements if benefits and policy advantages and disadvantages were discussed. **1998 Proc. 2nd Quarter II 758.**

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Section 3 (cont.)

E. This subsection was added during the 1998 redraft. **1998 Proc. 4th Quarter 690.**

F. Discussion in 1974 focused on the types of advertising and the rules that should be applicable to each. Three forms of advertisements were considered appropriate for definition: institutional advertising, invitations to inquire and invitations to contract. **1974 Proc. II 415.**

It was the task force recommendation to amend the model by adding definitions of the three types of advertising, with appropriate amendments to other sections. **1974 Proc. II 419, 423.**

H. The definition was added in 1974 and then modified in 1988 to delete some of what had been inserted. **1989 Proc. I 709.** Much of that deleted text was reinserted in 1999 from the guidelines, where it had been moved earlier. **1998 Proc. 1st Quarter II 691.**

I. The definition of lead-generating device was added in 1988. **1989 Proc. I 709.**

J. Definitions J through N were added during the 1998 redraft of the model. **1998 Proc. 4th Quarter II 691.**

M. When preparing the amendments adopted in 1999, the group decided to add a definition of “prominently” or “conspicuously,” since this issue had resulted in much discussion at the previous meeting. The chair noted that elsewhere in the model all required disclosures were to be set out conspicuously. The use of many bold or contrasting color disclosures might render the formatting requirements meaningless. The definition was therefore revised to require that “prominent” or “conspicuous” language be presented in a manner that was noticeably set apart from other information or images. **1998 Proc. 2nd Quarter II 758.**

Section 4. Method of Disclosure of Required Information

The text of the opening paragraph is nearly identical to the original model drafted in 1955. **1956 Proc. I 134.**

Historical notes written in 1973 noted that the section should be read in conjunction with Section 5, which was added in 1972. **1973 Proc. II 438.**

A. Subsection A was added in 1998 as part of the redrafting effort. It was a rewording of one of the interpretive guidelines that had been drafted years earlier. **1998 Proc. 4th Quarter II 691, 705.**

B. Subsection B was added as part of the 1998 redraft of the model. Consistent with the working group’s decision to include interpretive guidelines in the text of the model if they were prescriptive, the language of Subsection B was a rewrite of a guideline. **1998 Proc. 4th Quarter II 691, 705.**

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Section 5. Form and Content of Advertisements

This section was included first in the 1972 amendments. **1973 Proc. I 245.**

The historical notes drafted in 1973 said that this section was intended to assure that an advertisement would not be so incomplete or vague as to have the capacity to deceive. The notes recommended that the Subsection A should be read in conjunction with the purpose section of the model. **1973 Proc. II 438-439.**

A. The last sentence was added in 1998 as a transfer from an interpretive guideline that was deleted. **1998 Proc. 4th Quarter II 691, 705.**

B. This subsection was added in 1998. It was a rewording of what had been attached as an interpretive guideline. **1998 Proc. 4th Quarter II 691, 705.**

C. As first drafted, this subsection spoke of measuring the “overall impression that it is likely to create upon a person of average education and intelligence, and whether it may be reasonably comprehended by the general public.” An interested party commented that the language did not take into consideration the audience to which it was directed. In response to that comment, the draft was changed to measure against the segment of the public to which it was directed. **1973 Proc. I 228.**

In 1998 a group of drafters deleted the phrase “upon a person of average education or intelligency” after some discussion. **1998 Proc. 2nd Quarter II 758, 792.**

D. The drafting note added after Subsection D was a slightly reworded transfer of an interpretive guideline. **1998 Proc. 4th Quarter II 692, 705.**

E. This subsection was added to the model in 1988 without recorded discussion. **1989 Proc. I 709.**

F. This subsection was added to the model in 1988. The only changes since that time have been stylistic. **1989 Proc. I 709.**

G. This subsection was added to the model in 1988, and has been changed very little since that time. **1989 Proc. I 709.**

Section 6. Advertisements of Benefits Payable, Losses Covered or Premiums Payable

This section was included in the first model adopted in 1955. **1956 Proc. I 132-134.**

The historical notes written in 1973 said the section was revised to such an extent that much of it ought to be considered new. Although some of the words were the same, their impact was very different. **1973 Proc. II 439.**

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Section 6A

A. When the model was being revised in 1972, an interested party commented that the heading for Subsection A caused him concern. It stated, “Deceptive Words, Phrases or Illustrations Prohibited.” He expressed concern about the use of “prohibited” in the heading and also about the prohibition against the use of certain words in subsequent paragraphs. He opined that the earlier NAIC model created a presumption that the use of certain words had the capacity to mislead, but the presumption was rebuttable. The prohibitions in the version were worded so absolutely that he opined they exceeded statutory authority in that the mere use of a prohibited word created an irrebuttable presumption that the advertising was untrue. **1973 Proc. I 228.**

The phrase objected to remained in the model until 1999. **1998 Proc. 4th Quarter II 692.**

One commentator suggested that a prohibition against using certain words was inconsistent with Section 5C, which stated that whether an advertisement had the capacity to mislead or deceive had to be determined from the overall impression that it was likely to create. To prohibit certain words often meant the word or phrase had been taken out of context. He urged that the advertisement be viewed as a whole. **1973 Proc. I 229.**

Another interested party suggested that the words were often necessary for a factual presentation of benefits. He cautioned that the draft before regulators in December 1972 might be used as a complete prohibition rather than as a description of language that could not be used to exaggerate benefits. He urged that the paragraph be redrafted to allow the use of the words only in a way that did not exaggerate the benefits. **1973 Proc. I 241.**

An interested party opined that the 1972 draft discriminated between different types of distribution systems and expressed surprise because he believed the direct response advertisers were subject to an “obvious inherent safeguard” to the public that was provided when a written presentation of coverage was made available as was done in direct response merchandising. He opined that the philosophy enunciated in Paragraph (20) did not reflect the true facts of direct response advertising. Initial acquisition costs were substantial because of advertising expense, but there were no continuing renewal acquisition costs. He said it was difficult to perceive why the NAIC would insist on a statement that was not consistent with the economic facts of life unless the purpose of Paragraph (20) was to preserve the traditional methods of distribution. **1973 Proc. I 241.**

During the 1998 redrafting effort, the paragraphs of the interpretive guidelines the described words and phrases that should not be used were included in the text of the model. **1998 Proc. 4th Quarter II 692-697, 705-708.**

An interested party responded to an earlier comment about weekly or monthly hospital indemnity benefits, as discussed in Paragraph (24), stating that the prohibition of weekly or monthly benefits was an over-reaction to solve a very simple problem. He opined that the utilization of a daily and monthly benefit displayed with equal prominence in no way jeopardized the objective of truthful and complete benefits. **1973 Proc. I 241.**

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Section 6A (cont.)

When the model was being redrafted in 1998, the group agreed to extend the provisions of Paragraph (6), which prohibited misleading statements about benefit levels, to apply to all types of coverage except major medical and disability income insurance. The drafters tried several options before coming up with a clear way of saying this. **1998 Proc. 2nd Quarter II 758.**

Paragraph (8) was added to Subsection A, taken from language in the interpretive guidelines. Some concern was expressed about the language and the chair agreed to work with staff to clarify its intent, which is to prohibit language that portrayed the maximum benefit payable under the policy as the benefit payable in all cases, when such was not the case. **1998 Proc. 2nd Quarter II 758.**

Several discussions took place among the drafters with regard to the phrase “financial ruin” in Paragraph (32), which had been moved from the interpretive guideline into the regulation. The drafters agreed that the phrase should not be allowed in the sale of any limited benefit plans, but would be allowed in the sale of major medical expense coverage and disability income insurance. One regulator expressed skepticism that the terminology should ever be allowed. **1998 Proc. 3rd Quarter 579, 621.**

B. When the 1972 draft was under consideration, an interested party urged the drafters to differentiate between an “offer to contract” and an “invitation to inquire.” He urged regulators to consider the nature of the advertisement as to whether it was an invitation to inquire or an offer to contract. He opined that a discussion of an item such as dollar amount of benefits should not necessitate setting forth all limitations, exceptions and reductions. The draft adopted in 1972 did not differentiate. **1973 Proc. I 230, 246.**

C. Paragraphs (1) and (2), included in the first model adopted, appeared in a similar version as the current model. **1956 Proc. I 134.**

In 1972 the drafters changed the phrase in Paragraph (2) to say that it *prohibited* the use of the phrase “no medical examination required.” The earlier version had said it *limited* the use of that phrase. An interested party objected to the change, saying it completely changed the purpose of the provision. He saw the original purpose as an effort to prohibit the use of the phrase in a manner that would mislead an individual into thinking a claim involving a preexisting condition would be covered. **1973 Proc. I 231.**

Paragraph (3) was added to the model in 1972. A commenter said there may be legal implications if the box contained in the 1972 version was not checked. He asked if that meant the policyholder could not be bound under the terms of the contract. He wondered if failure to respond would impose additional duties on the insurer. A drafting note to this provision said that in some states the second alternative statement would not be acceptable. **1973 Proc. I 232, 246-247.**

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Section 7. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability and Termination

A. As originally adopted, the section included a provision stating that an advertisement that referred to renewability, cancelability or termination, or that referred to a policy benefit or stated a time or age with regard to eligibility must disclose these provisions in a manner that did not minimize the qualifying condition. **1956 Proc. I 134.**

The version adopted in 1972 modified this provision slightly to say that when an advertisement referred to a dollar amount or a period of time for which a benefit was payable, the disclosure must take place as specified. An interested party opined that this blurred the distinction between an invitation to inquire versus an offer to contract. **1973 Proc. I 232, 247.**

In 1974 the phrase “which is an invitation to contract” was added. At the same time the drafters identified three types of advertising and defined them. **1974 Proc. II 432.**

B. The text of Subsection B was added during the 1998 redraft of the model, taken to a great extent from the interpretive guidelines. **1998 Proc. 4th Quarter II 697-698, 709-710.**

C. The text of Subsection C was added in 1998, with the language coming from the interpretive guidelines that had previously existed. **1998 Proc. 4th Quarter II 698, 710.**

D. The text of Subsection D was included in the 1998 amendments and was based on the interpretive guidelines. **1998 Proc. 4th Quarter 698, 710.**

Section 8. Standards for Marketing

This section was added in 1998 as part of an extensive redrafting effort of three models. The new standards were first limited to products that were supplemental in nature. The drafters decided it was not appropriate to limit the section to particular categories of coverage. **1998 Proc. 3rd Quarter 582.**

An interested party requested that the requirement to establish auditable procedures contained in Paragraph (3) not apply to employer health plans. Another interested party requested that disability income coverage be exempted from both Paragraph (2) and (3). The drafters agreed that disability income insurance should be exempted from Paragraph (2), but neither should be exempted from Paragraph (3). **1998 Proc. 3rd Quarter 579.**

Section 9. Testimonials or Endorsements by Third Parties

A. Subsection A is substantially the same as the original language drafted in 1955. **1956 Proc. I 135.**

The drafting note, added in 1998, had previously been part of the interpretive guidelines. **1998 Proc. 4th Quarter II 699, 710.**

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Section 9 (cont.)

B. This subsection was added in 1988 and has remained the same since that time. **1989 Proc. I 711.**

The drafting note was added in 1998, and used the text of what had previously been an interpretive guideline. **1998 Proc. 4th Quarter II 699, 710.**

C. This subsection first appeared in the 1972 version of the model, which provided that if a person making a testimonial or endorsement had been compensated, directly or indirectly, or had a financial interest in the company, that fact must be disclosed. An interested party suggested several changes, including the necessity to distinguish between testimonials and endorsements. **1973 Proc. I 232-233, 247.**

An interested party commented that the public was entitled to a candid disclosure that the public personage endorsing the product had an economic incentive to do so. Consequently, the person making a testimonial or endorsement should make the disclosure that he was being paid to do so or that he was an officer or director of the insured. **1973 Proc. I 241.**

The provision was substantially rewritten in 1988. **1989 Proc. I 712.**

The drafting note, added in 1998, was moved from the interpretive guidelines. **1998 Proc. 4th Quarter II 699, 710.**

D. This subsection was added in 1988 and has not been substantially changed since that time. **1989 Proc. I 712.**

E. This subsection was added in 1988 and has not been substantially changed since that time. **1989 Proc. I 712.**

F. This subsection was added in 1988 and has not been substantially changed since that time. **1989 Proc. I 712.**

Section 10. Use of Statistics

A. The opening paragraph of Subsection A was included in the original model adopted in 1955, with only a few changes in wording adopted subsequently. **1956 Proc. I 135.**

The two paragraphs expanding on Subsection A were added in 1988 and have seen little change since that time. **1989 Proc. I 712.**

An interested party raised concerns about the use of outdated statistics. This concern was addressed in the drafting note following Subsection A, which was added during the 1998 redraft of the model. The drafting note indicated that outdated statistics are those that were no longer relevant or have changed significantly. **1998 Proc. 3rd Quarter 582, 626.**

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Section 10 (cont.)

B. This subsection was part of the amendments adopted in 1972. The text has not changed since then. An early draft of that provision said that the advertisement could not discuss claims settlements that were above the average claim settlement. He objected that this phrase was ambiguous and it was clarified. **1973 Proc. I 233, 248.**

C. The test of this section appeared in the original model. The drafting note was taken from the interpretive guidelines, moved to the drafting note format in 1998. **1998 Proc. 4th Quarter II 700, 710.**

Section 11. Identification of Plan or Number of Policies

A. Subsection A was added in 1998. **1998 Proc. 4th Quarter II 700.**

B. The language of Subsections B and C is substantially similar to that in the original model adopted in 1954. **1955 Proc. I 135.**

Section 12. Disparaging Comparisons and Statements

Historical notes drafted in 1973 noted that the first sentence was contained in the original model adopted in 1955, except that the last phrase was added in December 1972. **1973 Proc. II 441.**

A. Subsections A through C were added in 1988. **1989 Proc. I 713.**

C. The drafting note following Subsection C was part of the interpretive guidelines, moved to this format in 1998. **1998 Proc. 4th Quarter II 700, 711.**

Section 13. Jurisdictional Licensing and Status of Insurer

A. Subsection A is substantially identical to the version originally adopted in 1955. The original version did follow this text with language stating that direct mail advertising should state that the insurer was licensed in certain states only. **1956 Proc. I 135-136.** That provision was deleted a year later without recorded discussion. **1957 Proc. I 89.**

The drafting note following Subsection A was formerly part of the interpretive guidelines, transferred to a drafting note in 1998. **1998 Proc. 4th Quarter II 701, 711.**

B. Subsection B was added in 1972, as part of the substantial rewrite of the model. An interested party opined that prohibiting an insurer from informing the public that it has, in fact, been licensed by the insurance department and examined and found to be in a sound financial condition may be a disservice to the public. He suggested that the purpose of the provision should not be to prohibit the information from reaching the public, but to make certain that the disclosure was not presented in a manner to imply that a public body had endorsed this company's products over others. **1973 Proc. I 234, 248.**

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Section 13B (cont.)

Historical notes created in 1973 said that the subsection was a combination of some provisions from earlier models with additional clarifications. The notes said that although the rule permitted reference to an insurer being licensed in a state where the advertisement appeared, it did not allow exaggeration of the fact that an insurer was licensed because, as a general rule, the insurer must be licensed in a state where it directed its advertisements. **1973 Proc. II 441.**

A sentence from an interpretive guideline was added at the end of Subsection B in 1998, as part of an effort to include the text in the model if it was prescriptive. The drafting note was also moved from the interpretive guidelines. **1998 Proc. 4th Quarter II 701, 711.**

Section 14. Identity of the Insurer

Historical notes drafted in 1973 said that the 1972 version (which contained much of the current Subsections A and B) was patterned on a similar section in the original 1955 model, but it was more specific and was designed to recognize the existence of holding companies. **1973 Proc. II 441.**

A. The requirement that the advertisement refer to the policy form number was intended to be applicable to individual policies only, according to historical notes from 1973, written shortly after the provisions were drafted. **1973 Proc. II 441.**

The requirement to state the form numbers was modified by inserting the phrase “which is an invitation to contract.” This was done at the same time as the drafters defined the three types of advertisements. **1974 Proc. II 436.**

The drafting note following Subsection A was transferred from the interpretive guidelines. **1998 Proc. 4th Quarter II 701, 711.**

B. According to 1973 historical notes, most of Subsection B was directed at the misleading practices of some insurers in connection with the sale of insurance to supplement federal Medicare benefits. If the use of the initials of the corporate name would have the capacity to mislead or deceive the public as to the true identity of the insurer, this subsection prohibited the use of such initials without disclosing the true and correct complete name of the insurer. **1973 Proc. II 441.**

C. Subsections C through M were added in 1988 and remain substantially the same. **1989 Proc. I 713-714.**

M. The last sentence was added in 1998. **1998 Proc. 4th Quarter II 702.**

Section 15. Group or Quasi-Group Implications

A. This subsection was included in the original model adopted in 1955, with a few modifications in 1972, according to historical notes from 1973. **1973 Proc. II 441.**

B. This subsection was added in 1988 and remains substantially the same. **1989 Proc. I 714.**

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Section 15 (cont.)

C. This subsection was added in 1998 without recorded discussion. **1998 Proc. 4th Quarter II 702.**

D. Subsections D was added in 1998 with the extensive redraft of the regulation undertaken at that time. **1998 Proc. 4th Quarter II 702.**

E. The subsection was added in 1998. The drafting note following was moved from the interpretive guidelines. **1998 Proc. 4th Quarter II 702, 711.**

Section 16. Introductory, Initial or Special Offers

The first version of the model, adopted in 1955, contained in this section only the first sentence of Paragraph (1). **1956 Proc. I 136.** Most of the additional text in the section was added in 1972. **1973 Proc. I 249.**

A. Just prior to adoption of the expanded section in December 1972, an interested party protested the absence of the phrase “unless that is the fact.” He wondered why an insurer should not be able to advertise a special introductory rate as such. He also protested the prohibition on the use of the terms “special enrollment” or “limited enrollments.” He suggested this would prohibit the use of enrollment periods in the marketing of health insurance. **1973 Proc. I 234.**

He suggested that in lieu of a prohibition on enrollment periods, that the provision be amended to require that at least six months elapse between enrollment periods where the same group was being solicited for the same product. The draft adopted in 1972 left a blank for the length of time that must elapse and included a drafting note that the committee had not reached consensus on the issue. **1973 Proc. I 234, 249.**

The drafters received another comment letter that suggested that the public interest was best served by requiring disclosure of the deadline for applicant actions, the fact that the present offer would be repeated, and the approximate commencement of the next enrollment period. **1973 Proc. I 241-242.**

The drafting notes following Subsection A were moved from the interpretive guidelines. **1998 Proc. 4th Quarter II 702-703, 711.**

B. Subsection B began with a prohibition against a reduced initial rate. An interested party commented that it did not appear to be in the best interests of the public to do so. He opined that the real problem was not that the initial premium was lower, but that some advertisements did not make sufficient disclosure of the premium required for renewal. The drafters followed his suggestion but included a drafting note stating they had not reached consensus on the issue and noting that some states did prohibit introductory rates. **1973 Proc. I 234-235, 249.**

The drafting note following Subsection B was added in 1988. **1989 Proc. I 714.**

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Section 17. Statements About An Insurer

The original model adopted in 1955 contained only the first sentence of this section. **1956 Proc. I 136.**

The second sentence was added in 1972. An interested party commented that the phrase “unless it reflects the limitations of the scope and extent of the recommendation” was ambiguous. The sentence was modified before being included in the model. **1973 Proc. I 235, 249-250.**

The drafting note was transferred from the interpretive guidelines. **1998 Proc. 4th Quarter II 703, 712.**

Section 18. Enforcement Procedures

A. The original model was drafted with a requirement to maintain the advertising file for a period of three years. It was revised in 1973 to a period of four years. **1973 Proc. II 442.**

B. This provision appeared in the initial model adopted in 1955. **1956 Proc. I 137.**

The drafting note following Subsection B was added in 1988. **1989 Proc. I 715.**

Section 20. Filing for Prior Review

The model originally adopted in 1955 did not include provisions for filing or prior approval of advertising. In 1971 the health insurance committee received a letter from a trade association expressing concern that a number of states had recently instituted new requirements for filing and, in some cases, prior approval of advertising material used in solicitation of accident and health insurance. The writer expressed the opinion that the NAIC advertising rules had been working well, and the concern about problems presented when states found it necessary to establish different enforcement procedures. Problems cited were undue delay and the burdensome matter of transmitting volumes of paper. The writer suggested that the NAIC review the advertising rules to determine if any changes were necessary. **1971 Proc. II 418-419.**

More than a year later, discussion about review of advertising came up again. Several states raised the question of the authority of individual states to require the filing for review, prior to use, of advertising material. The NAIC committee considering modifications to the model did not take a position on the desirability of prior review, and it was the consensus of the group that this was an issue that should be addressed by the states individually. **1973 Proc. I 225.**

The section was modified in 1988 to give it a section number instead of calling it an “addendum” and deleting a provision limiting its impact to direct response advertising. **1989 Proc. I 715.**

The drafting note at the end of the section was copied from an interpretive guideline. **1998 Proc. 4th Quarter II 704, 712.**

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Chronological Summary of Actions

December 1955: Model adopted.

June 1956: Developed interpretive guidelines to model, but decided not to publish them.

December 1956: Few amendments adopted.

December 1971: Made some revisions to the model; printed interpretive guidelines.

December 1972: Made some revisions to the model.

June 1974: Made some amendments; differentiated between an invitation to inquire and an invitation to contract.

December 1988: complete review of the model and numerous changes to the regulation and the interpretive guidelines.

March 1999: Extensive update of model regulation. Interpretive guidelines were incorporated into text of model if prescriptive or added as drafting notes if explanatory.