IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

Consumer Services

18.04.03 – Advertisement of Disability (Accident And Sickness) Insurance

Who does this rule apply to?
This rule applies to health insurers that provide accident and sickness insurance, including Medicare supplement accident and sickness insurance and long-term care insurance.

What is the purpose of this rule?
The purpose of this rule assures truthful and adequate disclosure of all material and relevant information in advertising. This is accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct among insurers.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

- Title 41, Chapter 2, et seq., Idaho Code – The Department of Insurance
- Title 41, Chapter 13, et seq., Idaho Code – Trade Practices and Frauds

Who do I contact for more information on this rule?

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Boise, ID 83720-0043

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Boise, ID 83720-0043
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000. LEGAL AUTHORITY.
Title 41, Chapters 2 and 13, Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. IDAPA 18.04.03, "Advertisement of Disability (Accident and Sickness) Insurance." (3-30-07)

02. Scope. To protect consumers by assuring truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance, including Medicare supplement accident and sickness insurance and long-term care insurance. This is accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of disability (accident and sickness) insurance in a manner that prevents unfair competition among insurers and promotes an accurate presentation and description to the insurance buying public. (3-20-20)

002. APPLICABILITY.

01. Disability and Medicare Supplement Insurance. Any disability (accident and sickness) insurance "advertisement," including Medicare supplement and long-term care insurance "advertisement," as that term is defined, intended for presentation, distribution or dissemination in this state when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer or producer. (3-20-20)

02. Control over Advertisement. Every insurer will establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements created, designed or presented, are the responsibility of the insurer whose policies are so advertised. (3-20-20)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Advertisement. Includes: (3-20-20)

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; (3-20-20)

b. Descriptive literature and sales aids of all kinds issued by an insurer or producer for presentation to members of the insurance buying public; and (3-20-20)

c. Prepared sales talks, presentations and material for use by producers whether prepared by the insurer or the producer. (3-30-07)

02. Policy. Any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement that provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life, and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts. The term includes contracts for Medicare supplement insurance and long-term care insurance. (3-20-20)

03. Insurer. Includes any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, and any other legal entity defined as an "insurer" in the Insurance Code of this state and is engaged in the advertisement of a policy as "policy" is herein defined. (3-20-20)

04. Exception. Any provision in a policy where coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy. (3-20-20)

05. Reduction. Any provision that reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be payable had such reduction not been used. (3-20-20)

06. Limitation. Any provision that restricts coverage under the policy other than an exception or a reduction. (3-20-20)

011. METHOD OF DISCLOSURE OF REQUISITE INFORMATION.
All information needed to be disclosed by these rules will be set out conspicuously and closely associated with the statements to which such information relates or under appropriate captions of such prominence that it will not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading. (3-20-20)

012. FORM AND CONTENT OF ADVERTISEMENTS.
The format and content of an advertisement of an accident or sickness insurance policy will be sufficiently complete, not misleading, and clear to avoid deception. (3-20-20)

013. ADVERTISEMENTS OF BENEFITS PAYABLE, LOSSES COVERED OR PREMIUMS PAYABLE.

01. Prohibitions. Deceptive words, phrases or illustrations banned: (3-20-20)

a. No advertisement will contain or use words or phrases such as, “all”; “full”; “complete”; “comprehensive”; “unlimited”; “up to”; “as high as”; “this policy will help pay your hospital and surgical bills”; “this policy will help fill some of the gaps that Medicare and your present insurance leave out”; “this policy will help to replace your income” or similar words and phrases, in a manner that exaggerates any benefits beyond the terms of the policy. (3-20-20)

b. An advertisement will not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit. Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions should fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered. (3-20-20)

c. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility will use words or phrases that 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. (3-20-20)

d. No advertisement of a hospital or other similar facility benefit will 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. When the policy contains a limit on the number of days of coverage provided, such limit needs to appear in the advertisement. (3-20-20)

e. No advertisement of a policy covering only one (1) disease or a list of specified diseases will imply coverage beyond the terms of the policy. (3-20-20)

f. An advertisement for a policy providing benefits for specified illnesses only, or for specified accidents only, will clearly and conspicuously in prominent type, state the limited nature of the policy. The statement will be in language identical to, or substantially similar to the following: “THIS IS A LIMITED POLICY”; “THIS IS A CANCER ONLY POLICY”; “THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY.” (3-20-20)

g. No advertisement of a direct response insurance product will 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. (3-20-20)

h. No advertisement will contain or use words or phrases such as, “Medicare supplement”; “Medigap”; “this policy will help fill some of the gaps that Medicare leaves out”; or similar words and phrases, unless the policy is issued in compliance with IDAPA 18.04.10. (3-20-20)

i. An advertisement will clearly state the type of insurance coverage being offered. (3-30-07)

02. Exceptions, Reductions and Limitations. (7-1-93)

a. When an advertisement refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the 1oss for which such benefit is payable, it will also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy. (3-20-20)

b. When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement that is subject to the requirements of the preceding paragraph will disclose the existence of such periods. (7-1-93)

c. An advertisement will not use the words "only"; "just"; "merely"; "minimum"; or similar words or phrases to describe the applicability of any exceptions and reductions. (3-20-20)

03. Pre-Existing Conditions. (7-1-93)

a. An advertisement subject to the requirements of Subsection 013.02 will, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The term "pre-existing condition" without an appropriate definition or description will not be used. (3-30-07)

b. When a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy will state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement will disclose that a medical examination is needed. (3-20-20)

c. When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form will contain a question or statement that reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. (3-20-20)

014. NECESSITY FOR DISCLOSING POLICY PROVISIONS RELATING TO RENEWABILITY, CANCELLATION AND TERMINATION.

When an advertisement refers to either a dollar amount or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it will disclose the provisions relating to renewability, cancellation and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner that will not minimize or render obscure the qualifying conditions. (7-1-93)

015. TESTIMONIALS OR ENDORSEMENTS BY THIRD PARTIES.

01. Testimonials. Testimonials used in advertisements will 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, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of this chapter. (3-20-20)

02. Disclosure of Financial Interest. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact will be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact will be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." This chapter does not require disclosure of union "scale" wages set by union rules if the payment is actually for such "scale" for TV or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of TV or radio advertisements requires disclosure of such compensation. (3-20-20)

03. Limitations and Restrictions. An advertisement will not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact will be disclosed in the advertisement. (3-20-20)

04. Retention of Data. When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss, and other pertinent information is retained by the insurer for inspection for a period of four (4) years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time. (3-20-20)

016. USE OF STATISTICS.

01. Requests for Use of Statistical Information. An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy cannot use irrelevant facts, and cannot be used unless it accurately reflects all relevant facts. Such an advertisement will not imply that such statistics are derived from the policy advertised unless such is the fact, and when applicable to other policies or plans will specifically so state. (3-20-20)

02. Restrictions on Representations. An advertisement will 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 cannot be used. (3-20-20)

03. Source of Statistics. The source of any statistics used in an advertisement will be identified in such advertisement. (7-1-93)

017. IDENTIFICATION OF PLAN OR NUMBER OF POLICIES.

01. Disclosure Requirements. When a choice of the amount of benefits is referred to, an advertisement will 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. (7-1-93)

02. Disclosure Based on Combination of Policies. When an advertisement refers to various benefits that may be contained in two (2) or more policies, other than group master policies, the advertisement will disclose that such benefits are provided only through a combination of such policies. (7-1-93)

018. DISPARAGING COMPARISONS AND STATEMENTS.
An advertisement will not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and will not disparage competitors, their policies, services or business methods, and will not disparage or unfairly minimize competing methods of marketing insurance. (7-1-93)

019. JURISDICTION LICENSING AND STATUS OF INSURER.

01. Restrictions on Licensing Jurisdiction. An advertisement intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed will not imply licensing beyond those limits. (3-20-20)

02. Restrictions on Endorsements. An advertisement will 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 United States Government. (7-1-93)

020. IDENTITY OF INSURER.

01. Name of Insurer to Be Identified. The name of the actual insurer is clearly identified and the

policy or policies advertised is identified by form number or otherwise described. An advertisement will not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device that, without disclosing the name of the actual insurer. (3-20-20)

02. Identity of Insurer Not to Be Misrepresented. No advertisement can use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to combinations of words, symbols, or physical materials used by agencies of the federal government or of this state, or 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. (3-20-20)

021. GROUP OR QUASI-GROUP IMPLICATIONS.

An advertisement of a particular policy will not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates or underwriting privileges, unless such is the fact. (7-1-93)

022. INTRODUCTORY, INITIAL OR SPECIAL OFFERS.

01. Restrictions on Introductory, Initial or Special Offers. (7-1-93)

a. An advertisement of an individual policy will not represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement cannot contain phrases describing an enrollment period as "special," "limited," or similar words. (3-20-20)

b. An enrollment period during which a particular insurance product may be purchased on an individual basis cannot be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement will indicate the date by which the applicant need mail the application, which is not less than ten (10) days and not more than forty (40) days from the date that such enrollment period is advertised for the first time. This chapter applies to all advertising media, i.e., mail, newspapers, radio, television, magazines and periodicals, by any one (1) insurer. It is inapplicable to solicitations of employees or members of a particular group or association that would be eligible under specific provisions of the Insurance Code for group, blanket or franchise insurance. The phrase "any one (1) insurer" includes all the affiliated companies of a group of insurance companies under common management or control. (3-20-20)

c. This chapter prohibits any statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless such is the fact. (3-20-20)

d. The phrase "a particular insurance product" in paragraph(s) of this Section means an insurance policy that provides substantially different benefits than those contained in any other policy. Different terms of renewability; and increase or decrease in the dollar amounts of benefits; and increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy will not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods. (7-1-93)

02. Restrictions on Reduced Initial 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 will not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium. (3-20-20)

03. Restriction on Special Awards. Special awards, such as a "safe drivers' award" will not be used in connection with advertisements of accident or accident and sickness insurance. (7-1-93)

023. STATEMENTS ABOUT AN INSURER.

An advertisement will 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 will not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitations of the scope and extent of the recommendation. (7-1-93)

024. ENFORCEMENT PROCEDURES.
Each insurer will maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement that will indicate the manner and extent of distribution and the form number of any policy advertised. Such file is subject to regular and periodical inspection by this Department. All such advertisements will be maintained in said file for a period of either four (4) years or until the filing of the next regular report on examination of the insurer, whichever period is longer. (3-30-07)

025. FILING FOR PRIOR REVIEW.
The Director may, at their discretion, require the filing of any accident and sickness insurance advertising material for review prior to use. (3-20-20)

026. -- 999. (RESERVED)

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