



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2629

RULE AND REGULATION 41

ADVERTISEMENT OF MEDICARE SUPPLEMENT INSURANCE

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|---------|-----|--|
| Section | 1. | Purpose |
| Section | 2. | Authority |
| Section | 3. | Applicability |
| Section | 4. | Definitions |
| Section | 5. | Method of Disclosure of Required Information |
| Section | 6. | Form and Content of Advertisements |
| Section | 7. | Advertisements of benefits, losses covered or premiums payable |
| Section | 8. | Necessity for disclosing policy provisions relating to Renewability, cancellability, and Termination |
| Section | 9. | Testimonials or Endorsements by Third Parties – Spokespersons |
| Section | 10. | Use of Statistics |
| Section | 11. | Disparaging Comparisons and Statements |
| Section | 12. | Jurisdictional Licensing and Status of Insurer |
| Section | 13. | Identity of Insurer |
| Section | 14. | Group or Quasi-Group Implications |
| Section | 15. | Introductory, Initial, or Special Offers |
| Section | 16. | Statements about an Insurer |
| Section | 17. | Enforcement Procedures |
| Section | 18. | Severability Provision |
| Section | 19. | Filing for Prior Review |
| Section | 20. | Interpretive guidelines |
| Section | 21. | Effective Date |

Section 1. PURPOSE

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

Section 2. AUTHORITY

This Rule is issued pursuant to the authority vested in the Commissioner by Ark. Code Ann. §23-61-108, §23-66-206, §23-66-207, §23-76-125, §25-15-203 and other applicable provisions of the Arkansas Insurance Code.

Section 3. APPLICABILITY

A. This Rule shall apply to any "Advertisement" of Medicare Supplement Insurance as that term is defined herein, unless otherwise specified in this Rule, which the insurer knows or reasonably should know is intended for presentation, distribution or dissemination in this State when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker, producer or solicitor, as those terms are defined in the Insurance Code of this State.

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

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

Section 4. DEFINITIONS

A. An "Advertisement" for the purpose of this Rule shall include:

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

(2) descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker, or solicitor for presentation to members of the insurance buying public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters, and lead generating devices as herein defined;

(3) 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.

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.

The definition of "advertisement" does not include: (1) material to be used solely for the training and education of an insurer's employees, agents, or brokers; (2) material used in-house by insurers; (3) communications within an insurer's own organization not intended for dissemination to the public; (4) individual communications of a personal nature with current policyholders other than material urging such policyholders to increase or expand coverages; (5) correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract; (6) court approved material ordered by a court to be disseminated to policyholders; or (7) a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged, provided, the announcement clearly indicates that it is preliminary to the issuance of a booklet.

B. "Medicare Supplement Insurance" means a group or individual policy of disability insurance or a subscriber contract of a hospital and medical service corporation or health maintenance organization which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age.

C. "Certificate" means, for the purpose of this Rule, any certificate issued under a group medicare supplement policy, which certificate has been delivered or issued for delivery in this State.

D. "Insurer" for purpose of this Rule shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, hospital medical service corporation, prepaid health plan and any other legal entity which is defined as an "insurer" in the Insurance Code of this State and is engaged in the advertisement of itself, or medicare Supplement Insurance.

E. "Reduction" for the purpose of this Rule shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

F. "Reduction" for the purpose of this Rule shall mean any provision which reduces the amount of the benefits; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

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

H. "Institutional advertisement" for the purpose of this Rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of Medicare Supplement Insurance or the promotion of the insurer as a seller of Medicare Supplement Insurance.

I. "Invitation to Inquire" for the purpose of this Rule shall mean an advertisement having as its objective the creation of a desire to inquire further about Medicare Supplement Insurance which is limited to a brief description of coverage, and which shall contain a provision in the following or substantially similar form:

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

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

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

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

M. "Lead Generating Device" for the purpose of this Rule shall mean any communication directed to the public which, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this State for the purchase of Medicare Supplement Insurance.

Section 5. METHOD OF DISCLOSURE OF REQUIRED INFORMATION

All information required to be disclosed by this Rule shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous manner or fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 6. FORM AND CONTENT OF ADVERTISEMENTS

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

B. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases whose meanings are clear only by implication or by the consumer's familiarity with insurance terminology shall not be used.

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

D. No insurer, agent, broker, producer, solicitor or other person shall solicit a resident of this State for the purchase of Medicare Supplement Insurance in connection with or as the result of the use of any advertisement by such person or any other person, where the advertisement:

- (1) Contains any misleading representations, or misrepresentations, or is otherwise untrue, deceptive or misleading with regard to the information imparted, the status, character or representative capacity of such person or the true purpose of the advertisement; or
- (2) Otherwise violates the provisions of this Rule.

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

Section 7. Advertisements of Benefits, Losses Covered or Premiums Payable

A. Deceptive Words, Phrases, or Illustrations Prohibited

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

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

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

(4) An advertisement shall not contain descriptions of policy limitations, exceptions, or reductions, worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a "benefit builder" or stating "even pre-existing conditions are covered after 6 months". Words and phrases used in an advertisement to describe

such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions, or reductions of the policy offered.

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

B. Exceptions, Reductions, and Limitations

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

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

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

C. Pre-Existing Conditions.

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

(2) When a Medicare Supplement Insurance policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required.

(3) When an advertisement contains an application form to be completed by the applicant and returned by mail, such application form shall contain a question or statement which reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows:

Do you understand that this policy will not pay benefits during the first six (6) months after the issue date for a disease or physical condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the policy issue date?

_____ YES

Or substantially the following statement;

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

Section 8. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability, and Termination.

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

Section 9. Testimonials or Endorsements by Third Parties.

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

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

- (1) Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise; or
- (2) Has been formed by the insurer, is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer; or 1
- (3) Has any person in a policy-making position who is affiliated with the insurer in any of the above described capacities; or
- (4) Is in any way directly or indirectly compensated for making a testimonial or endorsement.

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

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

E. An advertisement shall not state or imply that an insurer or a Medicare Supplement Insurance policy has been approved or endorsed by any individual, group of individuals, society, association, organization or other entity, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policy-making position in the association, that fact must be disclosed.

F. When a testimonial refers to benefits received under a Medicare Supplement 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 years or until the filing of the next regular report of examination of the

insurer, whichever is the longer period of time. The use of testimonials which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits 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 any insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from a policy advertised unless such is the fact, and when applicable to other policies or plans shall specifically so state.

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

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

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

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

Section 11. Disparaging Comparisons and Statements.

A. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and shall not disparage competitors, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance. This requirement shall not preclude health maintenance organizations, prepaid health plans and other direct service organizations from explaining how their health benefits products differ from indemnity insurance products.

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

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

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

Section 12. Jurisdictional Licensing and Status of Insurer.

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

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

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

Section 13. Identity of Insurer.

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

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

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

(a) that the advertised coverages are somehow provided by or are endorsed by such governmental agencies or such other insurers; or

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

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

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

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

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

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

I. The use of letters, initials, or symbols of the corporate name or a 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.

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

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

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

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

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

Section 14. Group or Quasi-Group Implications.

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

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

Section 15. Introductory, Initial, or Special offers.

A. (1) An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not contain phrases describing an enrollment period as “special”, “limited”, or similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising Medicare Supplement Insurance.

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

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

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

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

C. Special awards, such as a "safe drivers award" shall not be used in connection with advertisements of Medicare Supplement Insurance.

Section 16. Statements About an Insurer.

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

Section 17. Enforcement Procedures.

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

B. Certificate of Compliance. Each insurer required to file an Annual Statement which is now or which hereafter becomes subject to the provisions of this Rule must file with this Department, with its Annual Statement, a Certificate of Compliance executed by an authorized officer of the insurer wherein it is stated that, to the best of his knowledge, information and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this Rule and the Insurance Laws of this State as implemented and interpreted by this Rule.

Section 18. Severability Provision.

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

Section 19. Filing Requirements for Advertising

Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits in the State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the Commissioner not less than thirty (30) days prior to the date the insurer desires to use the advertisement.

INTERPRETIVE GUIDELINES

SECTION 20.

Guideline 1.

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

Guideline 3.

This Rule applies to any "advertisement" as that term is defined in Section 4 A, H, I, and J unless otherwise specified in the Rules This Rule applies to group, blanket and individual Medicare supplement insurance advertisements. Certain distinctions, however, are applicable to these categories. Among them is the level of conversance with insurance, a factor which is covered by Section 6 A. of the Rule.

Guideline 4-A

The scope of the term "advertisement" extends to the use of all media for communications to the general public, to the use of all media for communications to specific members of the general public, and to the use of all media for communications by agents, brokers, producers, and solicitors.

Guideline 4-I.

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

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

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

Guideline 5.

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

- (1) The first alternative provides for the disclosure of exceptions, limitations, reductions and other restrictions conspicuously and in close conjunction with the statements to which such information

relates. This may be accomplished by disclosure in the description of the related benefits or in a paragraph set out in close conjunction with the description of policy benefits.

- (2) The second alternative provides for the disclosure of exceptions, limitations, reductions and other restrictions not in conjunction with the provisions describing policy benefits but under appropriate captions of such prominence that the information shall not be minimized, rendered obscure or otherwise made to appear unimportant. The phrase "under appropriate captions" means that the title must be accurately descriptive of the captioned material. Appropriate captions include the following: "Exceptions", "Exclusions", "Conditions Not Covered", and "Exceptions and Reductions". The use of captions such as, or similar to, the following are not acceptable because they do not provide adequate notice of the significance of the material: "Extent of Coverage", "Only these Exclusions", or "Minimum Limitations".

In considering whether an advertisement complies with the disclosure requirements of this Rule, the Rule must be applied in conjunction with the form and content standards contained in Section 6.

Guideline 6-A

The Rule must be applied in conjunction with Sections 1 and 5 of the Rule. The Rule refers specifically to "format and content" of the advertisement and the "overall" impression created by the advertisement. This involves factors such as, but not limited to, the size, color and prominence of type used to describe benefits. The word "format" means the arrangement of the text and the captions.

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

Guideline 6-B

The Rule prohibits the use of incomplete statements and words or phrases which have the tendency or capacity to mislead or deceive because of the reader's unfamiliarity with insurance terminology. Therefore, words, phrases, and illustrations used in an advertisement must be clear and unambiguous. If the advertisement uses insurance terminology, sufficient description of a word, phrase or illustration shall be provided by definition or description in the context of the advertisement. As implied in Section 6 A; distinctly different levels of comprehension to the subscribers of various publications may be anticipated.

Guideline 7-A(I)

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

- (1) An advertisement which describes any benefits that vary by age must disclose the fact.
- (2) An advertisement that uses a phrase such as "no age limit" must disclose that premiums may vary by age or that benefits may vary by age if such is the case.
- (3) Advertisements, applications, requests for additional information and similar materials are unacceptable if they state or imply that the recipient has been individually selected to be offered insurance, or has had his eligibility for such insurance individually determined in advance, when in fact the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.

(4) Advertisements for group or franchise group plans which provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless such is the fact.

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

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

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

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

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

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

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

(12) When a range of benefit levels is set forth in an advertisement, it must be made clear that the insured will receive only the benefit level written or printed in the policy selected and issued.

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

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

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

(16) An advertisement may not omit the word "covered" when referring to benefits payable under its policy. Continued reference to "covered" is not necessary where this fact has been prominently disclosed in the advertisement.

(17) An advertisement must state that benefits payable under the policy are based upon Medicare eligible expenses, if such is the case.

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

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

(20) Advertisements for policies designed to supplement Medicare shall not employ devices which are designed to create undue anxiety in the minds of the elderly. Such phrases as "here is where most people over 65 learn about the gaps in Medicare", or "Medicare is great, but..." or which otherwise exaggerate the gaps in Medicare coverage are unacceptable. Phrases or devices which unduly excite fear of dependence upon relatives or charity are unacceptable. Phrases or devices which imply that long **sicknesses** or hospital stays are common among the elderly are unacceptable.

(21) An advertisement which is an invitation to contract implying that the coverage is supplemental to Medicare, if it does not explain the manner in which it is supplemental to Medicare coverage, is not acceptable.

(22) An advertisement which is an invitation to contract for Medicare Supplement Insurance is unacceptable if the advertisement:

- a. Fails to disclose in clear language which of the Medicare benefits the policy is not designed to supplement or if it otherwise implies that Medicare provides only those benefits which the policy is designed to supplement;
- b. Describes the in-patient hospital coverage of Medicare as "hospital Medicare", or "Medicare Part A" when the policy does not supplement the non-hospital or the psychiatric hospital benefits of Medicare Part A;
- c. Fails to describe clearly the operation of the Part or Parts of Medicare which the policy is designed to supplement; or
- d. Describes those Medicare benefits not supplemented by the policy in such a way as to minimize their importance relative to the Medicare benefits which are supplemented.

(23) Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population, or that particular segments of the population are acceptable risks, when such distinctions are not maintained in the issuance of policies, are not acceptable.

(24) Any advertisement which contains statements such as "anyone can apply", or "anyone can join", other than with respect to a guaranteed issue policy for which administrative procedures exist to assure that the policy is issued within a reasonable period of time after the application is received by the insurer, is unacceptable.

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

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

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

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

Guideline 7-A(2)

The Rule recognizes that certain words and phrases in advertising may have a tendency to mislead the public as to the extent of benefits under an advertised policy. Consequently, such terms (and those specified in the rules do not represent a comprehensive list but only examples) must be used with caution to avoid any tendency to exaggerate benefits and must not be used unless the statement is literally true in every instance. The use of the following phrases based on such terms or having the same effect must be similarly restricted: "pays hospital, surgical, etc., bills", "pays dollars to offset the cost of medical care", "safeguards your standard of living", "pays full coverage", "pays complete coverage", or "pays for financial needs". Other phrases may or may not be acceptable depending upon the nature of the coverage being advertised.

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

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

Guideline 7-A(4)

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

Guideline 7-A(5)

The rule should be applied in conjunction with Section 11. Phrases such as "we cut cost to the bone" or "we deal direct with you so our costs are lower" shall not be used.

Guideline 6-B(1)

An advertisement which is an invitation to contract as defined in Section 4-J must recite the exceptions, reductions, and limitations as required by the Rule and in a manner consistent with Section 5.

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 Ark. Code Ann. 523-85-102, et seq.

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

Guideline 7-C(1)

The Rule implements the objective of (Section 7 A(4)] by requiring in negative terms a description of the effect of a pre-existing condition exclusion because such an exclusion is a restriction on coverage. The subdivision also prohibits the use of the phrase "pre-existing condition" without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time limit as an affirmative benefit. The words "appropriate definition or description" mean that the term "pre-existing condition" must be defined as it is used by the company's claims department.

Guideline 7-C(2)

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

Use of a phrase such as "guaranteed issue", or "automatic issue", if the Policy excludes pre-existing conditions for a certain period, must be accompanied by a statement disclosing that fact in a manner which does not minimize, render obscure, or otherwise make it appear unimportant and is otherwise consistent with Section 5.

Guideline 7-C(3)

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

Guideline 8

Advertisements of cancellable Medicare Supplement policies must state that the contract is cancellable or renewable at the option of the company as the case may be. With respect to noncancellable policies and guaranteed renewable policies, the policy provisions, with respect to renewability, must be set forth and defined where appropriate.

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

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

Guideline 9-A

The Rule must be applied in conjunction with Section 9 and requires that all such statements must be genuine and not fictitious. Under the Rule, the manufacturing, substantive editing or "doctoring up" of a testimonial is clearly prohibited as being false and misleading to the insurance buying public. However, language which would be unacceptable under this Rule must be edited out of a testimonial.

Guideline 9-C

The Rule requires that both approval or endorsement of a policy by an individual, group of individuals, society, association, or other organization be factual and that any proprietary relationship between the sponsoring or endorsing organization and the insurer be disclosed. For example, if the dividend under an association group case is payable to the association, disclosure of that fact is required. Also, if the insurer or an officer of the insurer formed or controls the association, that fact must be disclosed. This Guideline also applies to Section 9E.

Guideline 9-E

The Rule requires both that approval or endorsement of a policy by an individual, group of individuals, society, association, or other organization be factual and that any proprietary relationship between the sponsoring or endorsing organization and the insurer be disclosed. For example, if the dividend under an association group case is payable to the association, disclosure of that fact is required. Also, if the insurer or an officer of the insurer formed or controls the association, that fact must be disclosed.

Guideline 10-A

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

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

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

Guideline 10-C

The Rule does not require that statistics for this State be used since such statistics as hospital charges and average stays may vary from state to state. When nationwide statistics are used, such fact should be noted, unless the statistics on the particular point are substantially the same in a state to which the advertisement is directed. Statistics may only be used if they are current and credible.

Guideline 11

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

Guideline 12-A

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

Guideline 12-B

Although the Rule permits a reference to an insurer being licensed in a state where the advertisement appears, it does not allow exaggeration of the fact of such licensing nor does it permit the suggestion that competing insurers may not be so licensed because, in most states, an insurer must be licensed in the state to which it directs its advertising.

Terms such as "official", or words of similar import, used to describe any policy or application form are not permissible because of the potential for deceiving or misleading the public. This guideline also applies to Section 12 C.

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

Guideline 15-A(1)

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

Guideline 15-A(2)

The Rule restricts the repetitive use of enrollment periods. The requirement of reasonable closing dates and waiting periods between enrollment periods was adopted to eliminate the abuses which formerly existed. This Rule does not limit just the use of enrollment periods. It requires that a particular insurance product offered in an enrollment period through any advertising media, including the prepared presentations of agents, cannot be offered again in the State until 3 months from the close of the enrollment period. Thus, an insurer must choose whether to use enrollment periods or open enrollment for a product. (See Section 15A(4) for the definition of "a particular insurance product".)

The Rule does not prohibit multiple advertising during an enrollment period through any and all media published or transmitted within this State as long as the enrollment periods for all such advertisements have the same expiration date.

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

The Rule does not require separation by 3 months of enrollment periods for the same insurance product in this State if the **advertising** material is directed by an admitted insurer to persons by direct mail on the basis that a common relationship exists with an entity. Examples of such would be a bank and its depositors, a department store to its charge account customers, or an oil company to its credit card holders, and more than one of such organizations is sponsoring such insurance product at different times if providing such insurance under such a method is not otherwise prohibited by law. However, the 3 month rule does apply to one specific sponsor to the same persons in this State on the basis of their status as customers of that one specific entity only.

Guideline 15-A(4)

The Rule defines the meaning of "a particular insurance product" in Section 15A.(2) and prohibits advertising of products having minor variations, such as different periods or different amounts of daily hospital indemnity benefits, in a succession of enrollment periods.

Guideline 16

The Rule is closely related to the requirements of Section 9 concerning the use of statistics. The Rule prohibits insurers which have been organized for only a brief period of time advertising that they are "old" and also prohibits emphasizing the size and magnitude of the insurer. Also, the occupations of the persons comprising the insurer's board of directors or the public's familiarity with their names or reputations is irrelevant and must not be emphasized. The preponderance of a particular occupation or profession among the board of directors of an insurer does not justify the advertisement of a plan of insurance offered to the general public as insurance designed or recommended by members of that occupation or profession. For example, it is unacceptable for an insurance company to advertise a policy offered to the general public as "the physicians' policy" or "the doctor's plan" simply because there is a preponderance of physicians or doctors on the board of directors of the insurer. The Rule

prohibits the use of a recommendation of a commercial rating system unless the purpose, meaning, and limitations of the recommendation are clearly indicated.

Guideline 17

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

Guideline 21

The effective date of this Rule shall be January 1, 1989.

Robert M. Eubanks, III
Insurance Commissioner

December 19, 1988
Date