

Public Notice of Direct Final Rulemaking

Rhode Island Government Register

AGENCY: Rhode Island Office of Health Insurance Commissioner (“OHIC”)

DIVISION: Insurance

RULE IDENTIFIER: 230-RICR-20-30-8 (formerly OHIC Regulation 9)

ORIGINAL ERLID: 5659

REGULATION TITLE: Advertisements of Medicare Supplement Insurance

RULEMAKING ACTION: Direct Final

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice:	July 26, 2018
End of Comment Period:	August 25, 2018

SUMMARY OF PROPOSED RULE: The regulation proscribes the standards for advertisement of Medicare Supplement Insurance in Rhode Island. While reformatting for incorporation into the RICR, the Department identified a number of technical non-substantive changes reflected in the attached proposal. In addition the following changes have been made:

Sections 8.1 & 8.2 – The language relating to “Authority” in section 8.2 has been separated and relocated to section 8.1.

Section 8.15 – A heading has been added to comport with the RICR format.

The Interpretive Guidelines appended to the regulation have been removed to be issued by OHIC by Bulletin.

The Department does not expect these proposed amendments to be controversial.

WHERE AMENDMENTS MAY BE INSPECTED:

A copy of the proposed amendments will be available for examination from, July 26, 2018 through August 25, 2018 by mail or at the Offices of the Health Insurance Commissioner, Attn: Elizabeth Dwyer, Esq., 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by emailing elizabeth.dwyer@dbri.gov or by calling Elizabeth Dwyer at (401) 462-9615. Electronic copies of the proposed amendment will also be available on the OHICs website at www.ohic.ri.gov and Secretary of State’s at <http://sos.ri.gov/ProposedRules/>. A copy of the proposed annotated regulations is also found below in the body of this webpage.

COMMENTS:

Interested persons may submit written objections to the proposed amendment of this regulation. If no objection is received on or before August 25, 2018, the Department will file the regulation

without opportunity for public comment and the regulation will be effective on August 25, 2018. Any written objections should be sent to the following addresses and must be received no later than 11:59 PM on August 25, 2018.

elizabeth.dwyer@dbr.ri.gov

OR

Office of Health Insurance Commissioner
Attn: Elizabeth Dwyer
1511 Pontiac Ave
Cranston, RI 02920

FOR FURTHER INFORMATION CONTACT:

Elizabeth Dwyer at (401) 462-9615, or at the email or mailing address listed above.

SUPPLEMENTARY INFORMATION:

Regulatory Analysis:

These proposed amendments will result in no adverse impact for small businesses.

Authority for This Rulemaking: R.I. Gen. Laws Chapter 27-18.2

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

The Office of Health Insurance Commissioner proposes to amend 230-RICR-20-30-8 (formerly OHIC Regulation 9) Advertisements of Medicare Supplement Insurance as follows:

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 20 - INSURANCE

SUBCHAPTER 30 - HEALTH INSURANCE

PART 8 - Advertisements of Medicare Supplement Insurance ~~with Interpretive Guidelines~~

8.1 Authority

This Part is issued pursuant to R.I. Gen. Laws Chapters 27-18.2, 27-29 and R.I. Gen. Laws §§ 42-62-12.

8.2 Purpose ~~and Authority~~

The purpose of ~~these rules~~ this Part is to provide prospective purchasers with clear and unambiguous statements in the advertisement of Medicare supplement insurance; to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance. This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which prevents unfair, deceptive and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by insurance agents and companies. ~~This regulation is issued pursuant to R.I. Gen. Laws §§ 27-18.2-1 et seq., 27-29-1 et seq. and 42-62-12.~~

8.3 Applicability

- A. These rules shall apply to any “advertisement” of Medicare supplement insurance as that term is defined herein, unless otherwise specified in these rules, that 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 Title 27 and in this Part ~~these rules~~.
- 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 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.

8.4 Definitions

A. "Advertisement":

1. An advertisement for the purpose of these rules shall include:
 - a. 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;
 - b. Descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker or solicitor for presentation to members of the insurance-buying public; including but not limited to, circular, leaflets, booklets, depictions, illustrations, form letters and lead generating devices of all kinds as defined in this rule; 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" does not include:
 - a. Material to be used solely for the training and education of an insurer's employees, agents or brokers;
 - b. Material used in-house by insurers;
 - c. Communications within an insurer's own organization not intended for dissemination to the public;
 - d. Individual communications of a personal nature with current policyholders other than material urging 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, the announcement must clearly indicate that is preliminary to the issuance of a booklet.
- B. "Medicare supplement insurance" means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations that 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 purposes of these rules, any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this state.
- D. "Insurer", for the purpose of these rules, shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, hospital service corporation, medical service corporation, prepaid health plan and any other legal entity which is defined as an "insurer" in R.I. Gen. Laws Title 27 and is engaged in the advertisement of itself, or Medicare supplement insurance.
- E. "Exception" for the purpose of these rules, 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.
- F. "Reduction" for the purpose of these rules, means any 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 had the reduction not been used.
- G. "Limitation" for the purpose of these rules, means any provision that restricts coverage under the policy other than an exception or a reduction.
- H. "Institutional advertisement," for the purpose of these rules, means 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 these rules, means an advertisement having as its objective the creation of a desire to inquire further about Medicare supplement insurance that is limited to a brief description of coverage, and that shall contain a provision in the following or substantially similar form:

1. "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 these rules, means a natural person, association, organization, partnership, trust, group, discretionary group, corporation or any other entity.
- K. "Person" for the purpose of these rules, means a 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 I, of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America, and popularly known as the "Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
- M. "Lead-generating device," for the purpose of these rules, 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 Medicare supplement insurance.
- N. "Commissioner" means the health insurance commissioner.

8.5 Method of Disclosure of Required Information

All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with 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 manner or fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

8.6 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 (or a subscriber contract, certificate or other term appropriate to the insurer). A policy trade name must be followed by the words...“Insurance Policy” (or other appropriate term) 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 these rules
- E. No insurer, agent, broker, solicitor or other person shall solicit residents of this state for the purchase of Medicare supplement insurance through the use of a true or fictitious name 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.

8.7 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 the 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 that also is an invitation to join an association, trust or discretionary group shall solicit insurance coverage on a separate and distinct application that requires separate signatures for each application. The separate and distinct application required for an advertisement which is also an invitation to join an association, trust or discretionary group need not be on a separate document or contained in a separate mailing. The insurance program shall be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership, if that is the case.
4. An advertisement shall not contain descriptions of policy limitations, exceptions or reductions, worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a “benefit builder” or stating “even preexisting conditions are covered after six (6) months.” 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.
5. An advertisement of Medicare supplement insurance sold by direct response shall not state or imply that “because no insurance agent will call and no commissions will be paid to ‘agents’” that it is a “low cost plan” or use other similar words or phrases because the cost of advertising and servicing the policies is a substantial cost in marketing by direct response.

B. 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.
2. When a Medicare supplement insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall state or imply that the applicant’s physical condition or medical history will not affect the issuance of the policy or payment of a claim under the policy. 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, 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, 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 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.

8.8 Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability and Termination

An advertisement that is an invitation to contract shall disclose the provisions relating to renewability, cancelability 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.

8.9 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 the statement, is subject to all the provisions of these rules. When a testimonial or endorsement is used more than one year after it was originally given, a confirmation must be obtained.
- B. A person shall be deemed a "spokesperson" if the person making the testimonial or endorsement:
 1. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

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
- C. The fact of a financial interest or the proprietary or representative capacity of a spokesperson shall be disclosed in an advertisement and shall be accomplished in the introductory portion of the testimonial or endorsement in the same form and with equal prominence thereto. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, that fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." The requirement of this disclosure may be fulfilled by use of the phrase "Paid Endorsement" or words of similar import in a type style and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement; whichever is larger. In the case of television or radio advertising, the required disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.
- D. The disclosure requirements of this rule shall not apply where the sole financial interest or compensation of a spokesperson, for all testimonials or endorsements made on behalf of the insurer, consists of the payment of union scale wages required by union rules, and if the payment is actually for the scale for TV or radio performances.
- E. An advertisement shall not state or imply that an insurer or a Medicare supplement insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organization, 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, that 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 shall 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 (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.

8.10 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 the 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 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, must be used with extreme caution because of the potential for misleading the public. As a specific example, an advertisement for Medicare supplement insurance that refers to the amount of life insurance that 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 the advertisement.

8.11 Disparage 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.
- B. An advertisement shall not contain statements such as “no red tape” or “here is all you do to receive benefits.”
- C. Advertisements that state or imply that competing insurance coverages customarily contain certain exceptions, reductions or limitations not contained in

the advertised policies are unacceptable unless the exceptions, reductions or limitations are contained in a substantial majority of the competing coverages.

- D. 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 unacceptable.

8.12 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.
- B. An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status; or the payment of its claims; or the merits, desirability or advisability of its policy forms or kinds of plans of insurance are approved, endorsed or accredited by any division or agency of this state or the United States government.
- C. An advertisement shall not imply that approval, endorsement or accreditation of policy forms or advertising has been granted by any division or agency of the state or federal government. "Approval" of either policy forms or advertising shall not be used by an insurer to imply or state that a governmental agency has endorsed or recommended the insurer, its policies, advertising or its financial conditions.

8.13 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 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 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 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 so similar to those used by governmental

- L. No insurer may use, in the trade name of its insurance policy, any terminology or words so similar to the name of a governmental agency or governmental program as to have the tendency to confuse, deceive or mislead the prospective purchaser.
- M. All advertisements used by agents, producers, brokers or solicitors of an insurer shall have prior written approval of the insurer before they may be used.
- N. An agent who makes contact with a consumer, as a result of acquiring that consumer's name from a lead generating device, shall disclose that fact in the initial contact with the consumer.

8.14 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 that is the fact.
- B. This rule prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements that 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.

8.15 Introductory, Initial or Special Offers

- A. Standards
 - 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 six (6) 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 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

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.

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 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, 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 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 shall be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears. The term "juxtaposition" means side by side or immediately above or below.
- C. Special awards, such as a "safe driver's award" shall not be used in connection with advertisements of Medicare supplement insurance.

8.16 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 recommendation.

8.17 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 advertisement that shall indicate the manner and extent of distribution and the form number of any policy advertised. The file shall be available for inspection by the commissioner. All such advertisements shall be maintained in the file for a period of either four (4) 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 these rules must file with the commissioner, 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 that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of these rules and the Insurance Laws of this state as implemented and interpreted by these rules.

8.18 Severability Provision

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

8.19 Filing for Prior Review

Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits in this 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 for review or approval by the commissioner to the extent it may be required under state law.

Appendix

INTERPRETIVE GUIDELINES FOR RULES GOVERNING ADVERTISEMENTS OF MEDICARE SUPPLEMENT INSURANCE

Guideline 1

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

Guideline 2

These rules apply to any “advertisement” as that term is defined in Section 3, Subsections A, H, I and J unless otherwise specified in the rules. These rules apply to group, blanket and individual Medicare supplement insurance advertisements. Certain distinctions, however, are applicable to these categories. Among them is the level of conversance with insurance, a factor which is covered by Section 5A of the rules.

Guideline 3-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 use of all media for communications by agents, brokers, producers and solicitors.

Guideline 3-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 that are designed to create undue anxiety in the minds of the elderly or excite fear of dependence upon relatives or charity;
- (2) — Exaggerate the gaps in Medicare coverage;
- (3) — Exaggerate the value of the benefits available under the advertised policy;
- (4) — Otherwise violate the provisions of these rules.

Guideline 4

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 the 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 5.

Guideline 5-A

The rule must be applied in conjunction with Section 1 and 4 of the rules. The rule refers specifically to “format and content” of the advertisement and the “overall” impression created by the advertisement. This involves factors such as, but not limited to, the size, color and prominence of type used to describe benefits. The word “format” means the arrangement of the text and the captions. The rule requires distinctly different advertisements for publication in newspapers or magazines of general circulation, as compared to scholarly, technical or business journals and newspapers. Where an advertisement consists of more than one piece of material, each piece of material must, independent of all other pieces of material, conform to the disclosure requirements of this rule.

Guideline 5-B

The rule 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. If the advertisement uses insurance terminology, sufficient description of a word, phrase or illustration shall be provided by

definition or description in the context of the advertisement. As implied in Guideline 5-A, distinctly different levels of comprehension to the subscribers of various publications may be anticipated.

Guideline 6-A(1)

The rule prohibits the use of incomplete statements and words or phrases that create deception by omission or commission. The following examples are illustrations of the prohibitions created by the rule:

- (1) — An advertisement that 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 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 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 such is the fact.
- (5) — It is unacceptable to use terms such as “enroll” or “join” with reference to group or blanket insurance coverage when such is not the case.
- (6) — An advertisement that states or implies immediate coverage is provided is unacceptable unless suitable administrative procedures exist so that the policy is issued within fifteen working days after the application is received by the insurer.
- (7) — Applications, request forms for additional information, and similar related materials are unacceptable if they resemble paper currency, bonds or stock certificates; or use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy advertised is connected with a government agency, such as the Social Security Administration or the Department of Health and Human Services.
- (8) — An advertisement that uses the word “plan” without identifying it as a Medicare supplement insurance policy is not permissible.

- ~~(9) — An advertisement that implies in any manner that the prospective insured may realize a profit from obtaining Medicare supplement insurance is not permissible.~~
- ~~(10) — An advertisement that 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 the 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 these exceptional or rare accidents or illnesses.~~
- ~~(12) — When a range of benefit levels is set forth in an advertisement, it must be made clear that the insured will receive only the benefit level written or printed in the policy selected and issued.~~
- ~~(13) — Advertisements for policies whose premiums are modest because of their limited amount of benefits shall not describe premiums as “low,” “low-cost,” “budget” or use qualifying words of similar import. This rule also prohibits the use of words such as “only” and “just” in conjunction with statements of premium amounts when used to imply a bargain.~~
- ~~(14) — An advertisement that exaggerates the effects of statutorily mandated benefits or required policy provisions or that implies that these 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 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 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 that 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 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 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 that are designed to create undue anxiety in the minds of the elderly. Such phrases as “here is where most people over sixty-five 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 that unduly excite fear of dependence upon relatives or charity are unacceptable. Phrases or devices that imply that long sicknesses or hospital stays are common among the elderly are unacceptable.~~
- ~~(21) — An advertisement that 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 that 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 that the policy is designed to supplement;~~
 - ~~(b) — Describes the in-patient hospital coverage of Medicare as “Medicare hospital,” or “Medicare Part A” when the policy does not supplement the non-hospital or the psychiatric hospital benefits of Medicare Part A;~~
 - ~~(c) — Fails to describe clearly the operation of the part or parts of Medicare that 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 that are supplemented.~~
- ~~(23) — Advertisements that 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) — 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 unacceptable.~~

- ~~(25) An advertisement that uses a 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 that in 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 that state or imply that premiums will not be changed in the future are not acceptable unless the advertised policies so provide.~~
- ~~(27) An advertisement that 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 that is an invitation to contract that fails to disclose the amount of any deductible or the percentage of any co-insurance factor is not acceptable.~~

~~Guideline 6-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, the 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 that 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 that are an invitation to contract for policies designed to supplement Medicare benefits are unacceptable if they fail to disclose that no hospital confinement benefits will be payable for that portion of a Medicare benefit period for which Medicare pays all hospital confinement expenses (currently sixty days) other than the initial deductible if the policy so provides. The length of the period must be stated in days.~~

~~Guideline 6-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 preexisting conditions must also be restated under a caption~~

~~concerning exclusions or limitations, notwithstanding that the preexisting condition exclusion has been disclosed elsewhere in the advertisement. (See Guideline 6-C for additional comments on preexisting conditions.)~~

~~Guideline 6-A(5)~~

~~The rule should be applied in conjunction with Section 10. 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 that is an invitation to contract as defined in Section 3J must recite the exceptions, reductions and limitations as required by the rule 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 Policy Provision Law. 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 that does not minimize, render obscure or otherwise make them appear unimportant.~~

~~Guideline 6-C(1)~~

~~The rule implements the objective of Section 6A(4)(a) by requiring in negative terms a description of the effect of a preexisting condition exclusion because such an exclusion is a restriction on coverage. The subdivision also prohibits the use of the phrase “preexisting condition” without an appropriate definition or description of the term and prohibits stating a reduction in the statutory time limit as an affirmative benefit. The words “appropriate definition or description” mean that the term “preexisting condition” must be defined as it is used by the company’s claims department.~~

~~Guideline 6-C(2)~~

~~The phrase “no health questions” or words of similar import shall not be used if the policy excludes preexisting conditions. Use of a phrase such as “guaranteed issue,” or “automatic issues,” if the policy excludes preexisting conditions for a certain period, must be accompanied by a statement disclosing that fact in a manner which does not minimize, render obscure or otherwise make it appear unimportant and is otherwise consistent with Section 4.~~

~~Guideline 6-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 7~~

~~Advertisements of cancelable Medicare supplement policies must state that the contract is cancelable or renewable at the option of the company as the case may be. With respect to noncancellable policies and guaranteed renewable policies, the policy provisions, with respect to renewability, must be set forth and defined where appropriate. The rule also requires a statement of the qualifying conditions that 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 fifty percent 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 that provides for age step-rated premium rates based upon the policy year or the insured's attained age must disclose the rate increases and the times or ages at which the premium increases.~~

~~Guideline 8-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 that would be unacceptable under these rules must be edited out of a testimonial.~~

~~Guideline 8-G~~

~~The rule requires that both approval or endorsement of a policy by an individual, group or 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 8E.~~

~~Guideline 9-A~~

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

~~Guideline 9-G~~

~~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, that 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 10~~

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

~~Guideline 11-A~~

~~The rule 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 rule unless the advertisement states that the insurer is not licensed in those states.~~

~~Guideline 11-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 that 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 11C.~~

~~Guideline 14-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 14-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 that formerly existed. This rule does not limit just the use of enrollment periods. It requires that a particular insurance product offered in an enrollment period through any advertising media, including the prepared presentations of agents, cannot be offered again in the state until [insert number] months from the close of the enrollment period. Thus, an insurer must choose to use enrollment periods or open enrollment for a product. (See Section 14A(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 6 since the close of a preceding enrollment period that was open to the general public for the same product. The rule does not require separation by 6 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 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 these organizations is sponsoring an insurance product at different times if providing the insurance under such a method is not otherwise prohibited by law. However, the 6 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 14-A(4)~~

~~The rule defines the meaning of “a particular insurance product” in Section 14A(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 15~~

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

~~Guideline 16~~

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

~~Guideline 18~~

~~Filing of all Medicare supplement advertisements is required by this model and by the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360).~~