

TITLE 114

LEGISLATIVE RULES

INSURANCE COMMISSIONER

SERIES 10

ADVERTISEMENT OF ACCIDENT AND SICKNESS INSURANCE

§ 114-10-1. General.

1.1. Scope. -- The purpose of this regulation is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of accident and sickness insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy of such insurance offered through various advertising media.

1.2. Authority. -- W. Va. Code §33-2-6 and §33-11-6.

1.3. Filing Date. -- March 15, 1973.

1.4. Effective Date. -- April 20, 1973.

§ 114-10-2. Applicability.

(a) This regulation shall apply to any accident and sickness insurance "Advertisement," as that term is hereinafter defined, intended for presentation, distribution or dissemination in this State when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker or solicitor as those terms are defined in the Insurance Code of this State and this regulation.

(b) Every insurer shall establish and at all times maintain a system of control over the

content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

§ 114-10-3. Definitions.

3.1. Advertisement. -- "Advertisement" for the purpose of this regulation shall include:

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

(b) Descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters; and

(c) Prepared sales talks, presentations and material for use by agents, brokers and solicitors.

3.2. Policy. -- "Policy" for the purpose of this regulation shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life, and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts.

3.3. Insurer. -- "Insurer" for the purpose of this regulation shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization 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 a policy as "Policy" is herein defined.

3.4. Exception. -- "Exception" for the purpose of this regulation 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.

3.5. Reduction. -- "Reduction" for the purpose of this regulation shall mean any provision

which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

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

§ 114-10-4. Disclosure.

4.1. Method of disclosure of required information. -- All information required to be disclosed by this regulation 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 such information shall not be minimized, rendered obscure or presented in ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

§ 114-10-5. Standards.

5.1. Form and content of advertising.

(a) The format and content of an advertisement of an accident or sickness insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may reasonably be 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, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

§ 114-10-6. Advertisements Of Benefits Payable, Losses Covered Or Premiums Payable.

6.1. Deceptive words, phrases or illustrations prohibited. (a) 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.

(b) 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 pay your hospital and surgical bills"; "This policy will help fill some of the gaps that medicare and your present insurance leave out"; "This policy will help to replace your income" (when used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

(c) An advertisement shall not contain descriptions of a policy limitation, exception or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "Benefit Builder," or stating "Even preexisting conditions are covered after two (2) years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions in the policy offered.

(d) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "Tax Free"; "Extra Cash"; "Extra Income"; "Extra Pay"; or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

(e) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

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

(g) An advertisement for a policy providing benefits for specified illnesses only, such as cancer or for specified accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or

substantially similar to the following: "This is a Limited Policy"; "This is a Cancer Only Policy"; "This is an Automobile Accident Only Policy."

(h) An advertisement of a direct response insurance product shall not imply that because "No insurance agent will call and no commissions will be paid to agents" that it is "A Low Cost Plan," or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.

6.2. Exceptions, reductions and limitations.

(a) When an advertisement refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.

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

(c) 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."

6.3. Preexisting conditions.

(a) An advertisement which is subject to the requirements of Section 6.2 of these rules, shall in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "Preexisting Condition" without an appropriate definition or description is prohibited.

(b) When a policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim

thereunder. This section 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.

(c) When an advertisement contains an application form to be completed by the applicant and return by mail for a direct response insurance project, such application form shall contain a question or statement which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows:

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

Or substantially the following statement:

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

§ 114-10-7. Qualifying Conditions; Disclosure Required.

7.1. Necessity for disclosing policy provisions relating to renewability, cancelability and termination. -- When an advertisement refers to either a dollar amount or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it 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.

§ 114-10-8. Testimonials Or Endorsements By Third Parties.

8.1. Testimonials; generally. -- Testimonials 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, makes as its own all of the statements contained therein, and the advertisement, including such statements, is subject to all of the provisions of this regulation.

8.2. Financial interests; disclosure required. -- If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." This section does not require disclosure of union "Scale" wages required by union rules if the payment is actually for such "Scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "Travel And Entertainment" for filming or recording of television and radio advertisements remove the filming or recording from the category of an unsolicited testimonial and require disclosure of such compensation.

8.3. Proprietary relationships; disclosure required. -- An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement.

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

§ 114-10-9. Use Of Statistics.

9.1. Generally. -- An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact, and when applicable to other policies or plans shall specifically so state.

9.2. Claims settlement. -- An advertisement shall not represent or imply that claim settlements by the insurer are "Liberal" or "Generous," or use words of similar import, or that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for unique claim for the policy advertised is misleading and shall not be used.

9.3. Source. -- The source of any statistics used in an advertisement shall be identified in such advertisement.

§ 114-10-10. Identification Of Plan Or Number Of Policies.

10.1. Identification of plan or number of policies.

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

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

§ 114-10-11. Comparisons.

11.1. Disparaging comparisons and statements. -- An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable 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.

§ 114-10-12. Jurisdictional Licensing And Status Of Insurer.

12.1. Jurisdictional licensing. -- 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.

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

§ 114-10-13. Identity Of Insurer.

13.1. Generally. -- The name of the actual insurer and the form number or numbers advertised shall be identified and made clear in all of its advertisements. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

13.2. Association with government agencies. -- 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 combinations 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.

§ 114-10-14. Special Underwriting Privileges.

14.1. Group or quasi-group implications. -- An advertisement or 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.

§ 114-10-15. Introductory, Initial Or Special Offers.

15.1. Generally.

(a) 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 accident and sickness insurance.

(b) 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 such enrollment period is advertised for the first time. This section applies to all advertising media, i.e., mail, newspapers, radio, television, magazines and periodicals, used by any one (1) insurer. This section is inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket or franchise insurance. The phrase "Any One Insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

(c) This section 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.

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

15.2. Reduced initial premium. -- 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 reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the reduced initial premium and the renewal premium must be stated in juxtaposition in each portion of the advertisement where the reduced initial premium appears.

15.3. Special awards. -- Special awards, such as a "Safe Drivers' Award" shall not be used in connection with advertisements of accident or accident and sickness insurance.

§ 114-10-16. Statements About An Insurer.

16.1. 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.

§ 114-10-17. Enforcement Procedures.

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

17.2. Certificate of compliance. -- Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this regulation 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 regulation and the insurance laws of this State as implemented and interpreted by this regulation.

§ 114-10-18. Special Enforcement Procedures.

18.1. Filing of advertisements. -- The Commissioner in his discretion may require that an insurer file with this Department, for review prior to use, direct response advertising materials. When so required, such advertising materials must be filed not less than a reasonable time to be specified by the Commissioner prior to the date the insurer desires to use the advertisement in West Virginia.

18.2. Interpretive guidelines; adoption by Commissioner. -- To facilitate compliance with this regulation, the Commissioner may adopt appropriate interpretive guidelines. To the

extent not inconsistent with the statutes of this State and this regulation, such guidelines shall be consistent with the interpretive guidelines adopted and revised from time to time by the National Association of Insurance Commissioners for use by the various states in the interpretation of these regulations.

§ 114-10-19. Separability.

19.1. Partial invalidity. -- If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.

§ 114-10-20. Violations.

20.1. Penalties. -- Any insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the laws of West Virginia.