02- DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

 031 BUREAU OF INSURANCE

Chapter 140 ADVERTISEMENT OF HEALTH INSURANCE

SUMMARY: This regulation defines terms used in Health Insurance and the advertising of it, limits certain methods of advertising Health Insurance, and prescribes certain methods of advertising Health Insurance.

1. Definitions

A. "Health Insurance" for the purpose of this Regulation shall include the following:

1. Health Insurance as defined in Title 24-A, M.R.S.A., Chapter 9, Section 704, is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.

2. Nonprofit hospital or medical service plans.

B. An "advertisement" for the purpose of this Regulation shall include:

1. Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and TV scripts, billboards and similar displays; and

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

3. Prepared sales talks, presentations and material for use by agents and brokers and representations made by agents and brokers in accordance therewith.

C. "Policy" for the purpose of this Regulation means the written contract of or written agreement for or effecting Health Insurance as defined herein, by whatever name called, and including all clauses, riders, endorsements and papers which are a part thereof.

D. "Insurer" for the purpose of this Regulation means every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of Health Insurance as defined herein, by whatever name called.

E. "Premium" for the purpose of this Regulation shall mean the consideration for Health Insurance as defined herein, by whatever name called. Any "assessment", or any "membership", "policy", "survey", "inspection", "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium.

F. This Regulation shall also apply to agents and brokers to the extent that they are responsible for the advertisement of any policy.

2 Advertisements in general

 Advertisements shall be truthful and not misleading, in fact or in implication or by omission of a fact or facts material to the understanding of the policy offered. An offer in an advertisement of free inspection of the policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in such advertisement.

3. Advertisements of benefits payable, losses covered or premiums payable

A. Deceptive Words, Phrases or Illustrations:

 Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable. An advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive. Any statement of the maximum amount payable is incomplete without disclosing any inside limits which are applicable.

B. Exclusions, Exceptions, Reductions and Limitations:

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

C. Introductory, Initial or Special Offers:

 An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact. If the initial premium is different from the renewal premium, both premiums must be clearly shown in close proximity.

4. Waiting, elimination, probationary or similar periods

 When a policy contains a 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 a loss, an advertisement covered by Section 3B shall disclose the existence of such periods.

5. Pre-existing conditions

A. An advertisement covered by Section 3B 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 term "pre-existing condition" shall not be used unless adequately defined.

B. When a policy does not cover losses traceable to pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not effect the issuance of the policy or payment of a claim thereunder. This limits the use of the phrase "no medical examination required" and phrases of similar import.

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

 "I understand that this policy will not pay benefits during the first \_\_\_ year(s) after the issue date for a disease or physical condition which I now have or have had in the past."

6. Renewability, cancellability and termination

 An advertisement which refers to renewability, cancellability or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, 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.

7. 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 it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

8. Testimonials and statistics

A. 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.

B. 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 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.

C. The identity of the insurer shall be made clear in all of its advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

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

E. An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless such is the fact.

F. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by an individual, group of individuals, society, association or other organization, unless such is the fact.

9. Service facilities

 An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy.

10. Statements about an insurer

 A. An advertisement shall not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business.

B. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services or business methods.

11. Maintenance of records

A. Advertising File: Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of individual policies and typical printed, published or prepared advertisements of blanket, franchise and group policies hereafter disseminated in this 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 periodical inspection by this Department. All such advertisements shall be maintained in said file for a period of not less than three years.

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 Regulation must file with the Insurance Department, together with its annual statement, a certificate 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 the insurance laws of this State as implemented and interpreted by this Regulation.

 Each insurer as defined herein is hereby directed to acknowledge receipt of this Regulation before January, 1973, by a letter signed by the Chief Executive Officer.

 NOTE: This Regulation supersedes Bulletin No. 81 dated Decem ber 1, 1958 and all prior rules and regulations relating to advertisements of Health Insurance.

 Refers to Title 24-A, M.R.S.A., Chapter 23, Section 2154 and Title 24, M.R.S.A., Chapter 19.

 In adopting this Regulation it is recognized that advertising is essential to the promotion of Health Insurance and that different kinds of advertising are needed for different purposes. Therefore, it is desirable to note that the purpose of this Regulation is not to inhibit the proper advertising of Health Insurance and that in determining whether an advertisement is false or misleading, its entire content, purpose, and use, will be considered.

 Pursuant to Title 24-A, M.R.S.A., Chapter 3, Section 212, the Insurance Commissioner hereby adopts the following Regulation Governing Advertisements of Health Insurance in order to establish a uniform advertising regulation in the State of Maine.

 Attached: Certificate of Compliance with Regulation Governing the Advertisement of Health Insurance (to be filed with Annual Statement)

A certificate of compliance, substantially in this form, is to be filed with the Annual Statement of each insurer as defined in Section 1. Paragraph D of the Regulation Governing Advertisemetns of Health Insurance.

CERTIFICATE OF COMPLIANCE WITH REGULATION

GOVERNING THE ADVERTISEMENT OF HEALTH

INSURANCE STATE OF MAINE

 To the best of my knowledge, information and belief, the advertisements disseminated by this insurer during the preceding statement year complied or were made to comply in all respects with the provisions of Regulation Governing Advertisements of Health Insurance.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Insurer) .

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature and Title of Officer) .

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(This certificate to be filed with annual statement)

EFFECTIVE DATE (ELECTRONIC CONVERSION): January 14, 1997

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 22, 2025