

This rule was filed as 13 NMAC 10.4.

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 4 ADVERTISING ACCIDENT AND HEALTH INSURANCE

13.10.4.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.
[7/1/97; Recompiled 11/30/01]

13.10.4.2 SCOPE:

A. This rule applies to any accident and health insurance policy advertisement which the insurer knows or reasonably should know is intended for presentation, distribution or dissemination in New Mexico 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 the Insurance Code, Section 59A-1-1 NMSA 1978 et seq.

B. This rule also applies to the following insurance policies to the extent this rule is not in conflict with the specifically applicable rule:

- (1) Medicare supplements (13 NMAC 10.8) [now 13.10.8 NMAC];
- (2) Managed Health Care (13 NMAC 10.13) [now 13.10.13 NMAC];
- (3) Long-Term Care (13 NMAC 10.15) [now 10.13.15 NMAC]; and
- (4) any other policy for which the Insurance Code rules require pre-approval of advertisements.

[7/1/97; Recompiled 11/30/01]

13.10.4.3 STATUTORY AUTHORITY: Sections 59A-2-9 NMSA 1978.
[7/1/97; Recompiled 11/30/01]

13.10.4.4 DURATION: Permanent.
[7/1/97; Recompiled 11/30/01]

13.10.4.5 EFFECTIVE DATE: July 1, 1997, unless a later date is cited at the end of a section or paragraph.

[7/1/97; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.10.4.6 OBJECTIVE: The purpose of this rule is to protect prospective purchasers with respect to the advertisement of accident and health insurance. The rule is intended to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as accident and health insurance. The rule establishes guidelines and permissible and impermissible standards of conduct in the advertising of accident and health 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.

[7/1/97; Recompiled 11/30/01]

13.10.4.7 DEFINITIONS: The following definitions apply for purposes of this rule:

A. **"Accident and health insurance policy"** means any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or health benefits, medical, surgical or hospital expense benefits, or dental or vision 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, double indemnity or accelerated death benefits included in life insurance and annuity contracts.

B. **"Advertisement:"**

(1) Advertisement means:

(a) printed and published material, audio visual material, and descriptive literature of an insurer used 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 circulars, leaflets, booklets, depictions, illustrations, form letters and lead-generating devices of all kinds as herein defined;

(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; and

(d) advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements.

(2) Advertisement does not mean:

(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 clearly indicates that it is preliminary to the issuance of a booklet.

C. **"Certificate"** means any certificate issued under a group accident and health insurance policy which has been delivered or issued for delivery in this state.

D. **"Exception"** 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.

E. **"Institutional advertisement"** means an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of accident and health insurance, or the promotion of the insurer as a seller of accident and health insurance.

F. **"Insurer"** means 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 the Insurance Code and is engaged in the advertisement of itself, or an accident and health insurance policy.

G. **"Invitation to contract"** means an advertisement which is neither an invitation to inquire nor an institutional advertisement.

H. **"Invitation to inquire"** means an advertisement having as its objective the creation of a desire to inquire further about accident and health insurance and which is limited to a brief description of coverage, and which shall contain a provision in the following or substantially similar form: "This policy has [exclusions] [limitations] [reduction 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]."

I. **"Lead-generating device"** means any communication directed to the public which, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of accident and health insurance.

J. **"Limitation"** means any provision which restricts coverage under the policy other than an exception or a reduction.

K. **"Person"** means any natural person, association, organization, partnership, trust, group, discretionary group, corporation or any other entity.

L. **"Reduction"** means any provision which 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 and the reduction has not been used.

[7/1/97; Recompiled 11/30/01]

13.10.4.8 SYSTEM OF CONTROL AND IDENTIFICATION:

A. 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 these advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

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

[7/1/97; Recompiled 11/30/01]

13.10.4.9 METHOD OF DISCLOSURE OF REQUIRED INFORMATION: All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which the information relates or under appropriate captions of sufficient 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.

[7/1/97; Recompiled 11/30/01]

13.10.4.10 FORM AND CONTENT OF ADVERTISEMENTS:

A. The format and content of an advertisement of an accident or health 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 superintendent 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, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

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

D. No insurer, agent, broker, producer, solicitor or other person shall solicit a resident of this state for the purchase of accident and health insurance in connection with or as the result of the use of advertisement by the person or any other persons, 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 the person or the true purpose of the advertisement; or

(2) otherwise violates the provisions of this rule.

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

[7/1/97; Recompiled 11/30/01]

13.10.4.11 ADVERTISEMENTS OF BENEFITS PAYABLE, 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 this information or use of these 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," "the 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.

(3) An advertisement which also is an invitation to join an association, trust or discretionary group must solicit insurance coverage on a separate and distinct application which requires separate signatures for each

application. The separate and distinct applications required need not be on a separate document or contained in a separate mailing. The insurance program must be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership, if that is the case.

(4) An advertisement shall not contain descriptions of policy limitations, exceptions or reductions, worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a “benefit builder” or stating “even preexisting conditions are covered after six months.” Words and phrases used in an advertisement to describe these 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 accident and health 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 these policies is a substantial cost in the marketing by direct response.

(6) 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 these 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.

(7) 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 unless these statements of monthly or weekly benefit amounts are in juxtaposition with equally prominent statements of the benefit payable on a daily basis. The term “juxtaposition” means side by side or immediately above or below. When the policy contains a limit on the number of days of coverage provided, the limit must appear in the advertisement.

(8) 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.

(9) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile 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,” or “THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY.”

(10) To facilitate the insured’s right of freedom of choice in the selection of insurance coverage, any advertisement or sales material furnished an applicant relating to any policy which provides limited coverage in terms of the practitioners whose services are covered shall clearly disclose the practitioner limitations.

B. Exceptions, reductions and limitations:

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

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

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

C. Preexisting conditions:

(1) An advertisement which is an invitation to contract shall, in negative terms, disclose the extent to which any loss is not covered if the cause of 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 an accident and health 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 thereunder. This rule prohibits the use of the phrase “no medical examination required” and phrases of similar import, but does not prohibit explaining “automatic issue.” If an insurer requires a medical examination for a specified policy, the advertisement if it is an invitation to contract 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 which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, the application form shall contain a question or statement substantially as follows: "Do you understand that this policy will not pay benefits during the first [insert number] month(s) after the issue date for a disease or physical condition which you now have or have had in the past? YES or NO" or substantially the following statement: "I understand that the policy applied for will not pay benefits for any loss incurred during the first [insert number] month(s) after the issue date on account of disease or physical condition which I now have or have had in the past."

[7/1/97; Recompiled 11/30/01]

13.10.4.12 NECESSITY FOR DISCLOSING POLICY PROVISIONS RELATING TO

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

[7/1/97; Recompiled 11/30/01]

13.10.4.13 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 an accident and health insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless that 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 must be disclosed.

F. When a testimonial refers to benefits received under an accident and health insurance policy, the specific claim data, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of four years or until the filing of the next regular report of examination of the

insurer, whichever is the longer period of time. The use of testimonials which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefit being advertised is not permissible.
[7/1/97; Recompiled 11/30/01]

13.10.4.14 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. This type of advertisement shall not imply that the statistics are derived from the policy advertised unless that is the fact, and when applicable to other policies or plans shall specifically so state.

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

(2) An advertisement using statistics which describe an insurer, such as assets and liabilities, 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 accident and health insurance which refers to the amount of life insurance which the company has in force or the amounts paid out in life insurance benefits is not permissible unless the advertisement clearly indicates the amount paid out for each line of insurance.

B. An advertisement shall not represent or imply that claim settlements by the insurer are “liberal” or “generous,” or use words of similar import, or 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.
[7/1/97; Recompiled 11/30/01]

13.10.4.15 IDENTIFICATION OF PLAN OR NUMBER OF POLICIES:

A. When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract 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 which is an invitation to contract refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that these benefits are provided only through a combination of the policies.

[7/1/97; Recompiled 11/30/01]

13.10.4.16 DISPARAGING COMPARISONS AND STATEMENTS:

A. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and shall not disparage competitors, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance.

B. An advertisement shall not contain statements such as “no red tape” or “here is all you do to receive benefits.”

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

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

[7/1/97; Recompiled 11/30/01]

13.10.4.17 JURISDICTIONAL LICENSING AND STATUS OF INSURER:

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

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

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

D. Advertisements must disclose that premium rates and forms have not been approved by the superintendent, if that is the fact.
[7/1/97; Recompiled 11/30/01]

13.10.4.18 IDENTITY OF INSURER:

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

B. No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to combination of words, symbols or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of 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 which employ words, letters, initials, symbols or other devices which are so similar to those used in governmental agencies or by other insurers are not permitted if they may lead the public to believe:

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

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

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

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

F. No advertisement may incorporate the word "medicare" in the title of the plan or policy being advertised unless, wherever it appears, the word is qualified by language differentiating it from medicare. This type of advertisement shall not use the phrase "[] medicare department of the [] insurance company," or language of similar import.

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

H. The use of letters, initials, or symbols of the corporate name or trademark that would have the tendency or capacity to mislead or deceive the public as to the true identity of the insurer is prohibited unless the true, correct and complete name of the insurer is in close conjunction and in the same size type as the letters, initials or symbols of the corporate name or trademark.

I. The use of the name of an agency or "[] underwriters" or "[] plan" in type, size and location so as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer is prohibited.

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

K. 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.

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

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

[7/1/97; Recompiled 11/30/01]

13.10.4.19 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 solicitations of a particular class, such as governmental employees, by use of advertisements which state or imply that their occupational status entitles them to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.
[7/1/97; Recompiled 11/30/01]

13.10.4.20 INTRODUCTORY, INITIAL OR SPECIAL OFFERS:

A. An advertisement of an individual policy shall not directly or by implication represent that:

- (1) a contract or combination of contracts is an introductory, initial or special offer; or
- (2) 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 that is the fact.

B. An advertisement shall not contain phrases describing an enrollment period as “special,” “limited,” or similar words or phrases when the insurer uses these enrollment periods as the usual method of advertising accident and health insurance.

C. Advertisements of a particular insurance product shall indicate the date by which the applicant must mail the application, which shall be not less than ten days and not more than forty days from the date that 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 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.

(1) The phrase “any one insurer” in 13 NMAC 10.4.20.3 [now Subsection C of 13.10.4.20 NMAC] includes all the affiliated companies of a group of insurance companies under common management or control.

(2) The phrase “a particular insurance product” in 13 NMAC 10.4.20.3 [now Subsection C of 13.10.4.20 NMAC] means an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

D. 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.

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

F. Special awards, such as a “safe drivers’ award” shall not be used in connection with advertisements of accident and health insurance.

[7/1/97; Recompiled 11/30/01]

13.10.4.21 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 recommendations.

[7/1/97; Recompiled 11/30/01]

13.10.4.22 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 the other state, with a notation attached to each advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. This file shall be subject to regular and periodical inspection by the department of insurance. All these advertisements shall be maintained in the file for a period of either five years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

B. **Certificate of compliance:** Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this rule must file with the department of insurance, 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 or her knowledge, information and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this rule and the insurance laws of New Mexico as implemented and interpreted by this rule.
[7/1/97; Recompiled 11/30/01]

13.10.4.23 FILING FOR PRIOR REVIEW: The superintendent may, in the superintendent's discretion, require the filing with the department of insurance, for review prior to use, of any accident and health insurance advertising material. This advertising material must be filed by the insurer with the department of insurance not less than thirty days prior to the date the insurer desires to use the advertisement.
[7/1/97; Recompiled 11/30/01]

HISTORY OF 13.10.4 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: ID 67-1, Sections 11-1-2, and 11-2-1 through 11-2-18, New Mexico Official Administrative Rules and Regulations Code, on December 1, 1967.

History of Repealed Material: [RESERVED]