

State of Utah
Administrative Rule Analysis
Revised June 2022

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact x

Title No. - Rule No. - Section No.

Rule or Section Number:

R590-130

Filing ID: Office Use Only

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:

R590-130. Rules Governing Advertisements of Insurance

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The rule is being changed in compliance with Executive Order 2021-12. During the review of this rule, the department discovered a significant number of issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Enforcement Date section because the rule is already in force, and update the Severability section to use the department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-23a-402	

Incorporations by Reference Information

7. Incorporations by Reference (if this rule incorporates more than two items by reference, please include additional tables):

A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	
Issue Date	
Issue or Version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Official Title of Materials Incorporated (from title page)	
Publisher	

Issue Date	
Issue or Version	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:	12/01/2022	
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

9. This rule change MAY become effective on:	12/08/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> and delaying the first possible effective date.			
Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	10/14/2022

R590. Insurance, Administration.

R590-130. Rules Governing Advertisements of Insurance.

~~**R590-130-1. Authority.**~~

~~_____ This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-23a-402, which authorizes the commissioner to define unfair or deceptive acts or practices in the business of insurance.~~

~~**R590-130-2. Purpose.**~~

~~_____ This rule is designed to help assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as insurance. This is intended to be accomplished by the establishment of guidelines and standards of conduct in the advertising of insurance in a manner which prevents unfair, deceptive and misleading advertising and which is conducive to accurate presentation and description to the insurance buying public through the advertising media and material used by insurance producers and companies.~~

~~**R590-130-3. Applicability.**~~

~~_____ A. This rule shall apply to any insurance "advertisement" as that term is defined herein unless otherwise specified in these rules, which the licensee knows or reasonably should know is intended for presentation, distribution or dissemination in this state when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer or producer, as those terms are defined in the Insurance Code of this state.~~

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

~~**R590-130-4. Definitions.**~~

~~_____ A (1) An "Advertisement" for the purpose of this rule shall include:~~

~~_____ (a) printed and published material, audio or visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, websites, emails, billboards and similar displays; and~~

~~_____ (b) prepared sales talks, presentations and material for use by producers and solicitors whether prepared by the insurer or the producer or solicitor, when used for members of the insurance buying public, whether mailed or delivered in person.~~

~~_____ (2) The definition of advertisement includes promotional material included with a policy when the policy is delivered as well as material used in the solicitation of renewals and reinstatements.~~

~~_____ B. "Institutional Advertisement" for the purpose of this rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of insurance, or the promotion of the insurer as a seller of insurance.~~

~~_____ C. "Invitation to Contract" for the purpose of this rule shall mean an advertisement regarding a specific insurance product and which describes one or more of the provisions of the contract for that product.~~

_____ D. "Invitation to Inquire" for the purpose of this rule shall mean an advertisement having as its objective the creation of a desire to inquire further about 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 detail of the coverage, call (or write) your insurance agent or the company (whichever is applicable)."

_____ E. "Preneed funeral contract" shall mean an agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services, which is funded, at least in part, by insurance.

R590-130-5. Method of Disclosure of Required Information.

_____ All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it may 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.

R590-130-6. Form and Content of Advertisements.

_____ A. The format and content of an insurance advertisement shall be sufficiently complete and clear to avoid deceiving or misleading the reader, viewer, or listener. Whether an advertisement is misleading or deceiving shall be determined 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, may not be used without a clear explanation of such words or phrases.

_____ C. An insurer must clearly identify its 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, in the case of health maintenance organizations, prepaid health plans and other direct service organizations, a health benefits product is being offered.

_____ D. No insurer, producer, solicitor or other person may solicit residents of this state for the purchase of insurance through the use of a name that is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of such person, or the true purpose of the advertisement.

R590-130-7. Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

_____ A. Deceptive Words, Phrases or Illustrations Prohibited:

_____ (1) No advertisement may 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 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 negate this requirement.

_____ (2) No advertisement may 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 the extent of any policy benefit when the policy is viewed as a whole.

_____ (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 shall be on separate documents. The insurance program must be presented so as to disclose to the prospective members that they are purchasing insurance as well as applying for membership, if that is the case. Refundability of a membership fee must be fully disclosed, as well as the complete identity of the underwriter.

_____ (4) An advertisement may 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 two 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 of the policy offered.

_____ (5) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility may 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.

_____ (6) No advertisement of confinement indemnity benefits shall advertise weekly or monthly benefits without also, with equal prominence, explaining that these benefits are based upon an accumulated daily pro rata benefit, if that is in fact the case.

_____ (7) No advertisement of a policy covering only one disease or a list of specified diseases may imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease so as to imply broader coverage than is the fact.

_____ (8) 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."

_____ (9) An advertisement for the solicitation or sale of a preneed funeral contract, which is funded or to be funded by a life insurance policy or annuity contract, shall adequately disclose the fact that a life insurance policy or annuity contract is involved or being used to fund

such arrangement.

_____ (10) An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

_____ 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 at a time period between the date of loss and the date benefits begin to accrue for such loss, an advertisement which is an invitation to contract shall disclose the existence of such periods.

_____ (3) An advertisement may 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 in any way so as to minimize the apparent effect of such exceptions, reductions, limitations, or exclusions.

_____ 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 such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" must be accompanied by a description or definition.

_____ (2) When an accident and health insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy may 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. 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, 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 or preceding the statement regarding the truthfulness of information provided in the application. 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 (insert period of time) 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 (insert period of time) after the issue date on account of disease or physical condition which I now have or have had in the past.

R590-130-8. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability and Termination.

_____ An advertisement which is an invitation to contract shall disclose the provisions relating to renewability, cancelability and termination, and any modification of benefits, losses covered, or premiums, in a manner which may not minimize or render obscure the qualifying conditions.

_____ The terms "noncancelable" or "noncancelable and guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums set forth in the policy at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

_____ The term "guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums at least to the age of 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

R590-130-9. Testimonials or Endorsements by Third Parties.

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

_____ (1) Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise; or

_____ (2) Has been formed by the insurer, is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer; or

_____ (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.

_____ B. 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, such 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 non-print advertising, the required

disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.

_____ C. An advertisement may not state or imply that an insurer or an insurance 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. 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.

_____ D. When a testimonial refers to benefits received under an 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 three years after the last use of said testimonial in any advertisement. 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 prohibited.

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

R590-130-10. Use of Statistics and Exaggerations.

_____ A. An advertisement may 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 under the policy advertised is misleading and may not be used.

_____ B. The source of any statistics used in an advertisement shall be identified in such advertisement.

R590-130-11. 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 obtained only through two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

R590-130-12. Identity of Insurer.

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

_____ B. No advertisement may 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 any state, or otherwise appear to be of such a nature that it would confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of any municipal, state or federal government.

_____ C. Advertisements, envelopes or stationery which employ words, letters, initials, symbols or other devices that 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 a governmental agency or such other insurers.

_____ (2) that the advertiser is the same as, is connected with, or is endorsed by a governmental agency or such other insurers.

_____ D. No advertisement may use the name of a state or political subdivision thereof in a policy name or description, unless the company name contains the same state or political subdivision name.

_____ E. No advertisement in the form of envelopes or stationery of any kind may use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy advertised, or any producer 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, where ever it appears, said word is qualified by language differentiating it from Medicare. Such an advertisement, however, may 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 he 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 mislead or deceive as to the true identity of the insurer or advertiser is prohibited.

_____ J. The use of an address that is misleading or deceiving as to the true identity of the insurer or advertiser, its location or licensing status is prohibited.

_____ K. No insurer or advertiser 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 that will confuse, deceive or mislead the prospective purchaser regarding governmental

~~sponsorship, endorsement, or connection with the insurance policy or the insurer.~~

~~R590-130-13. Group or Quasi-Group Implications.~~

~~_____ A. An advertisement of a particular policy may 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 and renewal rates are also given special or preferred status.~~

~~_____ 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.~~

~~R590-130-14. Enforcement Procedures.~~

~~_____ Advertising File. Each insurer or advertiser 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 three years from date of last use.~~

~~R590-130-15. Enforcement Date.~~

~~_____ The commissioner shall begin enforcing the revised provisions of this rule on the effective date.~~

~~R590-130-16. Severability Provision.~~

~~_____ If any provision or clause of this rule or the application of it to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.~~

~~R590-130-17. Filing for Prior Review.~~

~~_____ The commissioner may, at his discretion, require the filing with the department, for review prior to use, of advertising material, for informational purposes only.]~~

~~R590-130-1. Authority.~~

~~_____ This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-23a-402.~~

~~R590-130-2. Purpose and Scope.~~

- ~~_____ (1) The purpose of this rule is to:~~
- ~~_____ (a) ensure that disclosures regarding benefits, limitations, and exclusions are clear and truthful; and~~
 - ~~_____ (b) establish guidelines and standards of conduct to prevent unfair, deceptive, and misleading insurance advertising.~~
- ~~_____ (2) This rule applies to:~~
- ~~_____ (a) an insurance advertisement intended for presentation, distribution, or dissemination in this state; or~~
 - ~~_____ (b) an insurer or a person on the insurer's behalf who presents, distributes, or disseminates an advertisement in this state.~~

~~R590-130-3. Definitions.~~

~~_____ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

- ~~_____ (1) "Advertisement" means:~~
- ~~_____ (a) printed and published material;~~
 - ~~_____ (b) audio or visual material;~~
 - ~~_____ (c) descriptive literature used in direct mail, a newspaper, a magazine, a radio script, a TV script, a website, an email, a billboard, or similar displays;~~
 - ~~_____ (d) a prepared sales talk, presentation, or material;~~
 - ~~_____ (e) promotional material included with a policy when the policy is delivered; and~~
 - ~~_____ (f) material used to solicit a renewal or reinstatement.~~
- ~~_____ (2) "Invitation to contract" means an advertisement that describes one or more contract provisions for a specific insurance product.~~
- ~~_____ (3) "Preneed funeral contract" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.~~

~~R590-130-4. Method of Disclosure of Required Information.~~

- ~~_____ (1)(a) Any information required to be disclosed under this rule shall be:~~
- ~~_____ (i) conspicuous and in close conjunction with the related statement; or~~
 - ~~_____ (ii) under appropriate captions.~~
- ~~_____ (b)(i) The disclosure shall be prominent.~~
- ~~_____ (ii) The disclosure may not be:~~
- ~~_____ (A) minimized;~~

- (B) rendered obscure;
- (C) presented in an ambiguous fashion; or
- (D) intermingled within the context of the advertisement.
- (2) Advertising materials shall be identified by a unique form number.
- (3) Advertising materials reproduced in quantity shall be identified by form numbers or other identifying means that are sufficient to distinguish an advertisement from any other advertising material, policy, application, or other material used by the insurer or advertiser.

R590-130-5. Content of Advertisements.

- (1) An insurance advertisement shall be complete, clear, and truthful.
- (2) An insurance advertisement may not deceive or mislead the reader, viewer, or listener in fact or in implication.
- (3) A word or phrase that requires familiarity with insurance terminology, or is clear only by implication, may be used only when clearly explained.
- (4) An insurer must clearly identify the insurance policy as an insurance policy.
- (5) A policy trade name must be followed by the words "Insurance Policy" or similar words:
 - (a) indicating that an insurance policy is being offered; or
 - (b) for a health maintenance organization, prepaid health plan, or other direct service organization, indicating that a health benefit product is being offered.
- (6) An insurer, producer, or other person may not solicit a resident of this state to purchase insurance by:
 - (a) using a deceptive name; or
 - (b) misleading a resident in this state regarding:
 - (i) an insurer, producer, or other person's status, character, proprietary capacity, or representative capacity; or
 - (ii) an advertisement's true purpose.

R590-130-6. Advertisements of Benefits Payable, Losses Covered, or Premiums Payable.

- (1) Deceptive words, phrases, and illustrations are prohibited.
 - (a) An advertisement may not omit information or use words, phrases, statements, references, or illustrations that may mislead or deceive a purchaser or potential purchaser regarding:
 - (i) the nature or extent of a policy benefit payable;
 - (ii) the loss covered; or
 - (iii) the premium payable.
 - (b) The requirements in Subsection (a) must be satisfied even if:
 - (i) the prospective insured could review the policy before the sale; or
 - (ii) an unsatisfied purchaser is offered a refund of the premium.
 - (c) An advertisement may not contain or use words or phrases in a manner that exaggerates a policy benefit when viewing the policy as a whole, including:
 - (i) all;
 - (ii) full;
 - (iii) complete;
 - (iv) comprehensive;
 - (v) unlimited;
 - (vi) up to;
 - (vii) as high as;
 - (viii) this policy will help fill some of the gaps that Medicare and your present insurance leave out;
 - (ix) the policy will help to replace your income; or
 - (x) similar words and phrases.
 - (d) An advertisement that is also an invitation to join an association, trust, or discretionary group shall:
 - (i) solicit insurance coverage on a separate and distinct application that requires separate signatures for each application;
 - (ii) have separate and distinct applications on separate documents;
 - (iii) disclose:
 - (A) that the prospective members are purchasing insurance;
 - (B) applying for membership;
 - (C) membership refundability; and
 - (D) the underwriter.
 - (e)(i) An advertisement may not describe policy limitations, exceptions, or reductions in a positive manner to imply that policy limitations, exceptions, and reductions are benefits.
 - (ii) The following are examples of prohibited uses:
 - (A) describing a waiting period as a "benefit builder"; or
 - (B) stating "even preexisting conditions are covered after two years."
 - (iii) Words and phrases used in an advertisement to describe the advertised policy's limitations, exceptions, and reductions shall fairly and accurately describe the negative features of the limitations, exceptions, and reductions.
 - (f)(i) An advertisement for a benefit that conditions payment on confinement in a hospital or similar facility may not use words or phrases that could mislead an individual to believe that the advertised policy enables an individual to profit from being hospitalized.

- (ii) The following are prohibited phrases:
 - (A) tax-free;
 - (B) extra cash;
 - (C) extra income;
 - (D) extra pay; or
 - (E) substantially similar words or phrases.
- (g) An advertisement for a fixed indemnity benefit that advertises weekly or monthly benefits shall explain in the advertisement, with equal prominence, that the benefits are based on an accumulated daily pro rata benefit.
- (h) An advertisement for a policy covering one disease or a list of specified diseases may not:
 - (i) imply coverage beyond the policy's terms; or
 - (ii) use synonymous terms to refer to a disease that may imply broader coverage than is in the policy.
- (i) An advertisement for a policy providing benefits for a specified illness, such as cancer, shall:
 - (i) state the policy's limited nature; and
 - (ii) use language identical or substantially similar to the following:
 - (A) "THIS IS A LIMITED POLICY"; or
 - (B) "THIS IS A CANCER ONLY POLICY".
- (j) An advertisement for a policy providing benefits for a specified accident, such as an automobile accident, shall:
 - (i) state the policy's limited nature; and
 - (ii) use language identical or substantially similar to "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".
- (k) An advertisement for a preneed funeral contract that is funded by a life insurance policy or annuity contract shall adequately disclose that a life insurance policy or annuity contract is:
 - (i) involved in the arrangement; or
 - (ii) being used to fund the arrangement.
- (l) An advertisement for a life insurance policy may not use a phrase in the policy's name or title that does not include the words "life insurance," unless other accompanying language clearly indicates that the policy is life insurance.
- (2) Exceptions, Reductions, and Limitations.
 - (a) An advertisement that is an invitation to contract shall disclose the policy's exceptions, reductions, and limitations that affect the policy's basic provisions.
 - (b) An advertisement that is an invitation to contract shall disclose a policy's waiting, elimination, probationary, or similar time period regarding:
 - (i) the policy's effective date and the effective date of coverage under the policy; or
 - (ii) the date of loss and the date benefits begin to accrue for the loss.
 - (c) An advertisement may not use words or phrases in a way that may minimize the effects of a policy's exceptions, reductions, limitations, or exclusions, including:
 - (i) only;
 - (ii) just;
 - (iii) merely;
 - (iv) necessary; or
 - (v) similar words or phrases.
- (3) Preexisting Conditions.
 - (a) An advertisement that is an invitation to contract shall disclose in a negative tone any loss that is not covered if the cause of the loss is traceable to a condition existing prior to the policy's effective date.
 - (b) A description or definition must accompany the use of the term "preexisting condition."
 - (c) An advertisement may not state or imply that an applicant's physical condition or medical history will not affect the issuance of a policy or a claim being paid when an accident and health insurance policy does not cover losses resulting from a preexisting condition.
 - (d) An advertisement is prohibited from using the phrase "no medical examination required" or similar phrases.
 - (e) An advertisement is not prohibited from using the phrase "guaranteed issue" or "automatic issue."
 - (f) An advertisement that is an invitation to contract regarding a specified disease policy shall disclose if a medical examination is required.
 - (g)(i) When an advertisement contains an application form to be completed and returned, the application form shall contain a question or statement regarding the policy's preexisting condition provision, which shall be located:
 - (A) immediately preceding the blank space for the applicant's signature; or
 - (B) preceding the statement regarding the truthfulness of information provided in the application.
 - (ii) The following are examples of the question or statement required under Subsection (g)(i):
 - (A) Do you understand that this policy will not pay benefits during the first (insert period of time) after the issue date for a disease or physical condition that you now have or have had in the past? YES; or
 - (B) I understand that the policy applied for will not pay benefits for any loss incurred during the first (insert period of time) after the issue date on account of a disease or physical condition that I now have or have had in the past.

R590-130-7. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability, and Termination.

- (1) An advertisement that is an invitation to contract shall disclose, in a manner that does not minimize or obscure the qualifying conditions, provisions regarding the following:

- (a) cancellation, renewability, and termination; and
- (b) modification of benefits, losses covered, or premiums.
- (2) An advertisement may only use the term "noncancelable" to advertise a policy that:
 - (a) the insured has the right to continue in force coverage by timely paying the policy's premiums; and
 - (b) the insurer has no right to change provisions in the policy while the policy is in force.
- (3) An advertisement may only use the term "guaranteed renewable" to advertise a policy that:
 - (a) the insured has the right to continue in force by timely paying the policy's premiums; and
 - (b) the insurer has no right to change provisions in the policy while the policy is in force, except that the insurer may make premium rate changes.

R590-130-8. Testimonials or Endorsements by Third Parties.

- (1) A person making a testimonial or endorsement is a spokesperson if the person:
 - (a) has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise;
 - (b) has been formed by the insurer;
 - (c) is owned or controlled by the insurer, the insurer's employees, or a person that owns or controls the insurer;
 - (d) has a person in a policy making position that is affiliated with the insurer in a capacity described in Subsections (1)(a) through (1)(c); or
 - (e) is directly or indirectly compensated for making a testimonial or endorsement.
- (2)(a) A testimonial or endorsement in an advertisement shall disclose in the introductory portion, in the same form and with equal prominence in the advertisement, that a spokesperson has the following interest or capacity in the insurer making the advertisement:
 - (i) a financial interest;
 - (ii) a proprietary interest; or
 - (iii) a representative capacity.
- (b) An advertisement shall disclose if the spokesperson was directly or indirectly paid for making a testimonial or endorsement.
- (c) The disclosure in Subsection (2)(b) may be fulfilled by:
 - (i) using the phrase "Paid Endorsement" or words substantially similar; and
 - (ii) using a font and size at least equal to the font and size for whichever of the following is larger:
 - (A) the spokesperson's name; or
 - (B) the body of the testimonial or endorsement.
- (d) A testimonial or endorsement disclosure for a non-print advertisement shall:
 - (i) make the disclosure in the advertisement's introductory portion; and
 - (ii) be given equal prominence in the advertisement.
- (3)(a) An advertisement may not state or imply that an individual, group of individuals, society, association, or other organization has approved or endorsed an insurer or an insurance policy unless:
 - (i) the individual, group of individuals, society, association, or other organization has approved or endorsed the insurer or the insurance policy; and
 - (ii) the advertisement discloses any proprietary relationship between an organization and the insurer.
- (b) An advertisement shall disclose, if applicable, the following regarding an entity making an endorsement or testimonial:
 - (i) the insurer formed the entity;
 - (ii) the insurer owns the entity;
 - (iii) the insurer controls the entity; or
 - (iv) a person that owns or controls the insurer formed, owns, or controls the entity.
- (c) If the entity in Subsection (3)(a) is an association, the advertisement must disclose, if applicable, the following regarding an insurer:
 - (i) the insurer or the insurer's officer formed or controls the association; or
 - (ii) the insurer or the insurer's officer holds a policy making position in the association.
- (4)(a) An insurer using a testimonial that refers to a benefit received under an insurance policy must retain for three years beginning when the insurer last used the testimonial in an advertisement:
 - (i) the specific claim data, including claim number;
 - (ii) the date of loss; and
 - (ii) any other pertinent information.
- (b) A testimonial in an advertisement is prohibited if:
 - (i) the testimonial does not correctly reflect the insurer's present practice; or
 - (ii) the testimonial is not applicable to the advertised policy or benefit.
- (5)(a) An advertisement may not imply that a state or federal agency or division has granted approval, accreditation, or endorsed an insurer's policy forms or advertisement.
- (b) An insurer may not use the approval or filing of a policy form or advertisement to state or imply that a governmental agency has endorsed or recommended the following:
 - (i) the insurer;
 - (ii) the insurer's policy;
 - (iii) the insurer's advertisement; or
 - (iv) the insurer's financial condition.

R590-130-9. Use of Statistics and Exaggerations.

(1) An advertisement may not represent or imply that:

- (a) an insurer's claim settlement practice is liberal, generous, or similar; or
- (b) an insurer's claim settlement practice is or will be beyond the contract's actual terms.

(2) An insurer may not mislead a consumer by advertising an unusual amount paid for a unique claim under an advertised policy.

(3) An advertisement shall identify the source of any statistical information used in the advertisement.

R590-130-10. Identification of Plan or Number of Policies.

(1) An advertisement that is an invitation to contract and that advertises a choice in available benefits shall disclose that:

- (a) the amount of benefits depends on the plan selected; and
- (b) the premium amount varies depending on the amount of benefits selected.

(2) An advertisement that is an invitation to contract that refers to various benefits shall disclose that:

- (a) two or more policies, other than a group master policy, may be issued; or
- (b) the benefits are provided only through a combination of the policies.

R590-130-11. Identity of Insurer.

(1)(a) An advertisement shall state the actual insurer's name.

(b) An advertisement that is an invitation to contract shall state the form number or policy number.

(c) An advertisement shall disclose the actual insurer's name before using any of the following, if the advertisement would be misleading or deceptive regarding the insurer's true identity:

- (i) a trade name;
- (ii) an insurance group designation;
- (iii) an insurer's parent company's name;
- (iv) the name of an insurer's particular division;
- (v) a service mark;
- (vi) a slogan;
- (vii) a symbol; or
- (viii) any other device.

(2) An advertisement may not use a word combination, symbol, or physical material in a manner that the content, phraseology, shape, color, or other characteristic:

(a) is similar to the word combination, symbol, or physical material used by a federal, state, or municipal governmental agency; and

(b) would confuse or mislead prospective insureds to believe that the advertisement is in some manner connected to a federal, state, or municipal governmental agency.

(3)(a) An advertisement, envelope, or stationery that uses words, letters, initials, symbols, or other devices that are similar to the words, letters, initials, symbols, layout, or other devices used by governmental agencies or other insurers is not permitted.

(b) An advertisement may not use words, letters, initials, symbols, or other devices that may lead the public to believe that a governmental agency or other insurer provided or endorsed the advertised coverages.

(c) An advertisement may not use words, letters, initials, symbols, or other devices that may lead the public to believe the advertiser is affiliated with or is endorsed by a governmental agency or other insurer.

(4) An advertisement may not use the name of a state or political subdivision in a policy description or name unless the company name contains the same state or political subdivision name.

(5) An advertisement may not use an envelope or stationery in a way that implies the insurer, the policy advertised, or the producer who may call on the consumer regarding the advertisement, is affiliated with a governmental agency.

(6)(a) An advertisement may not incorporate the word "Medicare" in the advertised plan or policy title.

(b) An advertisement may incorporate the word "Medicare" if the advertisement uses language differentiating the policy from the term "Medicare" in the advertisement.

(c) An advertisement may not use a phrase that includes "Medicare Department of an Insurance Company" or similar language.

(7) An advertisement may not imply that an individual may lose a right, privilege, or benefit under federal, state, or local law if the individual fails to respond to the advertisement.

(8) An advertisement may not use a letter, initial, or symbol of an insurer's corporate name or trademark that misleads or deceives the public regarding the insurer's identity, unless the advertisement:

(a) uses the insurer's correct and complete name; and

(b) places the insurer's correct and complete name in close conjunction with, and in the same type as the letters, initials, or symbols for the insurer's corporate name or trademark.

(9) An advertisement may not use an agency name, or a name that includes "Underwriters" or "Plan," in type, size, and location in the advertisement that may mislead or deceive a consumer regarding the identity of the insurer or advertiser.

(10) An advertisement may not use an address that is misleading or deceptive regarding an insurer or advertiser's:

(a) identity;

(b) location; or

(c) license status.

(11) An advertisement may not use any terminology or word in a trade name of an insurer's insurance policy that is similar to a governmental agency or governmental program that may confuse, deceive, or mislead a prospective purchaser.

(12) An advertisement may not use any terminology or word in a trade name of an insurer's insurance policy that implies a sponsorship, endorsement, or connection with a governmental agency or governmental program.

R590-130-12. Group or Quasi-Group Implications.

(1) An advertisement may not state or imply a preferred status in an advertisement unless the insurance policy provides the advertised renewal rate for:

(a) prospective insureds becoming group or quasi-group members covered under a group policy; or

(b) prospective insureds receiving special rates or underwriting under the group policy.

(2) When sold on an individual basis at regular rates, an advertisement may not solicit a particular class, such as governmental employees, by stating or implying that an occupational status entitles the member to a reduced rate for:

(a) a group; or

(b) another basis.

R590-130-13. Enforcement Procedures.

(1) Each advertiser or insurer shall maintain a file containing advertisements for three years from the date last used including:

(a) every printed, published, or prepared advertisement of the advertiser or insurer's individual policies;

(b) every printed, published, or prepared advertisement of the advertiser or insurer's blanket, franchise, and group policies;

(c) any advertisement disseminated in this state and any other state whether or not the insurer is licensed in the other state; and

(d) a notation attached to each advertisement that includes:

(i) the manner and extent the advertiser or insurer distributed the advertisement; and

(ii) the advertised insurance policy's form number.

(2) Each advertiser or insurer shall maintain the file required in Subsection (1) at the advertiser or insurer's home office or principal office.

(3) The file required in Subsection (1) is subject to the department's regular and periodic inspection.

R590-130-14. Filing for Prior Review.

(1) The commissioner may require an advertiser or insurer to file advertising material with the department for review before using the advertising material.

(2) The filing under Subsection (1) is for informational purposes only.

R590-130-15. Severability.

If any provision of this rule, Rule R590-130, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

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