Bulletin No. 12

*RULES APPLICABLE TO ADVERTISING OF ACCIDENT AND SICKNESS INSURANCE

October 20, 1972

Basic Principles of Interpretation of Bulletin

The proper promotion, sale and expansion of accident and sickness insurance are in the public interest, and the rules are to be construed in such a manner as not to restrict, inhibit or retard such promotion, sale and expansion.

In applying the rules it must be recognized that advertising plays an essential part in promoting a broader distribution of accident and sickness insurance. Advertising necessarily seeks to serve this purpose in various ways. Some advertisements are the direct or principal sales inducement and are designed to invite offers to contract. In other advertisements the function is to describe coverage broadly for the purpose of inviting inquiry for further information. Still other advertisements are solely for the purpose of promoting the reader's interest in the concept of accident and sickness insurance or of promoting the insurer sponsoring the advertisement. These differences should be given recognition through interpretation of the rules. Further, it should be recognized that exceptions, reductions and limitations have an important role in defining coverage for the purpose of keeping insurance costs within reasonable bounds.

Therefore, upon applying the rules to a specific advertisement, it will be necessary to take into consideration the detail, character, purpose, use and entire content of the advertisement.

Specific Principles of Interpretation of Bulletin

The rules apply to group as well as individual accident and sickness insurance. Because the two differ widely in many respects, it follows that one interpretation will not always suffice for both. Where that is the case, a specific interpretation for group is set forth. Some of the distinctions between Individual and Group that should be taken into account in applying the rules are:

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* All advertising, subject to this Bulletin, must be in conformity therewith not later than November 15, 1972.

1. Frequently the prospective group policyholder is thoroughly conversant with insurance or employs competent insurance advisors.

2. Group plans are often the result of collective bargaining whereunder the plan must continue in existence for a specified period of time even though the insurance carrier may be changed.

3. Many group contracts are tailor-made to fit the policyholder's particular situation, and are the result of extensive negotiations.

4. Group insurance generally contemplates that all or part of the premium is to be paid by the group policyholder.

5. The insurance provided by a group plan may be underwritten by several different insurers.

6. Much group insurance material is prepared and published after the contract is written.

7. Some states have statutory forms of group coverage.

Section 1. Definitions

A. An advertisement for the purpose of this bulletin shall include:

(1) printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, billboards and similar displays; and

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

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

B. Policy for the purpose of this bulletin shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits, or medical, surgical or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except where issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

C. Insurer for the purpose of this bulletin shall include any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy as herein defined.

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

Interpretation of Section 1A(1)

Advertisements for the sole purpose of obtaining employees, agents, agencies or brokers are among those not to be considered within the definition of an advertisement.

Interpretation of Section 1A(2)

The definition of the word "Advertisement" is intended to include material used in the solicitation of renewals and reinstatements except for communications or notices which mention the cost of the insurance but do not describe benefits. It does not include: material in house organs of insurers; communications within an insurer's own organization not intended for dissemination to the public; individual communications of a personal nature; nor correspondence between a prospective group policyholder and an insurer in the course of negotiating a group contract.

With respect to existing groups, reprints of group booklets after the effective date of this bulletin shall be considered within the definition of an advertisement.

A general announcement from a group policyholder to eligible individuals that a contract has been written is not intended to be an advertisement within the meaning of this bulletin if it clearly indicates that it is preliminary to a booklet.

Interpretation of Section 1A(3)

Materials to be used solely for the training and education of its employees, agents or brokers are not within the purview of this bulletin.

Interpretation of Section 1B

The language in Section 1B "except disability and double indemnity benefits included in life insurance and annuity contracts" shall be interpreted to mean "except disability and double indemnity benefits

included in life insurance, endowment or annuity contracts or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract".

Interpretation of Section 1C

An insurer is not responsible for an advertisement which is not under its direct or indirect control.

Section 2. Advertisements in General

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.

Interpretation of Section 2

The purpose of the first sentence of Section 2 is twofold. First, it states the general purpose of this bulletin by prohibiting advertisements which are not only false but which may mislead either in fact or by implication. It does, for instance, recognize that advertisements may be misleading even though literally true and capable of proof. Secondly, it establishes a broad principle designed to prohibit untruthful and misleading advertisements in addition to those principles covered by specific sections of this bulletin. To that extent it may be considered a "catch-all" rule.

The second sentence of this section is intended to prohibit the use of incomplete statements and words or phrases which, because of the reader's unfamiliarity with insurance terminology, have the tendency and capacity to mislead or deceive. It places no prohibition on the use of any particular words or phrases but does require that all terminology used in an advertisement, whether it be insurance terminology or otherwise, be sufficiently clear so as to avoid being misleading. In interpreting this particular portion of Section 2, it must be recognized that insurance terminology is often essential to properly explain the coverage being advertised.

As a general principle, words or phrases which are commonly understood by the public with respect to insurance, for example, such words or phrases as premiums, policies, contracts, reinstatement, lapse, grace period, capital, assets, investments, legal reserve, insurer, insured, policyholders, insurance company, and insurance usually need not be further clarified in the context of the advertisement. However, certain words or phrases may, unless adequately clarified in the context of the advertisement, mislead those who are not familiar with insurance terminology.

Section 3. Advertisements of Benefits Payable, Losses Covered or Premiums Payable

A. *Deceptive Words, Phrases or Illustrations*

Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered or premium payable. An advertisement relating to any policy benefit payable, loss covered or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive.

Explanation:

(1) The words and phrases "all", "full", "complete", "comprehensive", "unlimited", "up to", "as high as", "this policy will pay your hospital and surgical bills", or "this policy will replace your income", or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, but may be used only in such manner as fairly to describe such benefit.

(2) A policy covering only one disease or a list of specified diseases shall not be advertised so as to 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.

(3) The benefits of a policy which pays varying amounts for the same loss occurring under different conditions, or which pays benefits only when a loss occurs under certain conditions, shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

(4) Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum

daily benefit and the maximum time limit for hospital room and board expenses.

B. *Exceptions, Reductions and Limitations*

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

Explanation:

(1) The term "exception" shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

(2) The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction clause not been used.

(3) The term "limitation" shall mean any provision which restricts coverage under the policy other than as does an exception or a reduction.

(4) *Waiting, Elimination, Probationary or Similar Periods*

Where a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such a loss, an advertisement covered by Section 3B shall disclose the existence of such periods.

(5) *Pre-Existing Conditions*

(a) An advertisement covered by Section 3B shall 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.

(b) Where a policy does not cover losses traceable to pre-existing conditions, until the expiration of a specified period following the effective date of the policy, 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 limits the use of the phrase "no medical examination required" and phrases of similar import.

Interpretation of Section 3 Generally

To interpret Section 3 properly, it is necessary, first, to distinguish between Sections 3A and 3B. Generally, the purpose of Section 3A is to prevent an insurer from exaggerating the extent of policy benefits or minimizing cost by using phraseology which either overstates benefits or is so incomplete as to leave an exaggerated idea of benefits in the mind of the reader. The first sentence of the Section and Explanations (1) and (2) prohibit and explain exaggeration by overstatement. The second sentence of the Section and Explanations (3) and (4) prohibit and explain exaggeration by incompleteness.

Section 3B extends this principle of "no exaggeration". In essence, it states that in certain types of advertisements the only way that exaggeration of benefits can be avoided is to set forth in the same advertisements certain of the limitations, exceptions and reductions affecting the benefits described.

Section 3A applies to any advertisement which discusses benefits. Section 3B applies only to an advertisement which discusses benefits to the extent of mentioning the dollar amount or time limit of the benefits or cost of the policy or benefits thereunder.

Because the basic purpose of both Sections 3A and 3B is the same, to prevent exaggeration, they must necessarily overlap at times. For example: In advertising a policy which contains an aggregate benefit limit, it would be improper to use alone the phrase "no limit on the number of claims" because the second sentence of Section 3A requires completion of the statement in some manner like "no limit on the number of claims until the aggregate amount X dollars has been paid". If elsewhere the advertisement contains a discussion of dollar amount or time limit of benefits or cost of the policy or its benefits, Section 3B requires that the aggregate amount be set forth because it is an important "limitation". Therefore, in this example, the aggregate amount should be set out because both Sections 3A and 3B require it.

The distinction between Sections 3A and 3B can best be explained as follows: Section 3A is only concerned with phraseology of benefit descriptions in an advertisement. Section 3B is not primarily con-

cerned with phraseology but, in advertisements to which it applies, in having certain limitations, exceptions and reductions set forth. It is simply coincidental that to meet the phraseology requirements of Section 3A it may sometimes be necessary to describe a limitation, exception or reduction.

Interpretation of Section 3A, Specifically

In interpreting Section 3A, the following information and requirements should be observed:

1. Language which states or implies that certain age group or groups are eligible for coverage where such is not the fact is unacceptable.

2. Language which states or implies that each member under a "family" contract is covered as to the maximum benefits advertised where such is not the fact is unacceptable.

3. Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of people are unacceptable if in the issuance of policies such distinctions are not maintained.

4. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

5. Section 3A(3) applies only to "limited benefit" type policies, the term to be given the connotation is usually received in the industry.

6. A "limited benefit" type policy should be identified as such upon being advertised, by disclosure of its limited character.

For example, automobile, air and railroad travel policy advertisements should disclose that such policies are limited to accidents resulting from automobile, air or railroad travel, as the case may be, as well as the limited manner in which the accident must occur, including any unusual conditions.

Advertising of policies which are specifically tailored to augment benefits available to medicare insureds should disclose in unmistakable language what medicare benefits the policy is designed to supplement, e.g., hospital benefits only and further which medicare benefits it will not supplement, e.g., does not pay doctors' bills.

7. Examples of what benefits may be paid under a policy shall not disclose only maximum benefits unless such maximum benefits are paid for losses from common and probable illness rather than exceptional or rare illnesses.

8. Where a range of hospital room rate benefits is set forth in an advertisement, it must be made clear that the insured will receive only the room rate benefit written or printed in the policy selected. Language, which implies that the insured may select his room rate benefit at the time of hospitalization, is unacceptable.

9. Language, which implies that the amount of benefits payable under a loss-of-time policy may be increased at time of disability according to the needs of the insured, is unacceptable.

10. The term "confining sickness" is an abbreviated expression and in the case of either lifetime benefits or benefits for shorter periods the term must be explained in the advertisement. An example of an acceptable explanation would be: "Benefits are payable for total disability due to confining sickness only so long as the insured is necessarily confined indoors". Captions such as "Lifetime Sickness Benefits" or "Five Year Sickness Benefits" are incomplete if such benefits are subject to confinement requirements. Where sickness benefits are subject to confinement requirements, captions such as "Lifetime Confining Sickness Benefits" or "Five Year Confining Sickness Benefits" would be acceptable.

11. The following are specific examples of the types of advertising prohibited or permitted by Section 3A:

Advertisements shall not state that the insurer—

"pays hospital, surgical, etc. bills", or
"pays dollars to offset the cost of medical care", or
"safeguards your standard of living", or
"pays full coverage" or "pays complete coverage", or
"pays for financial needs", or
"provides for replacement of your lost paycheck",

unless the statement in each instance is literally true.

Where appropriate, such words or phrases may properly be used if preceded by the word "help", "aid", or "assist" or similar words or phrases.

Advertisements shall not emphasize the total amounts payable under hospital indemnity coverage or other benefits in a policy, such as benefits for private duty nursing, unless it provides with substantially equal prominence and in close conjunction therewith the actual amounts payable per day for such indemnity or benefit.

12. Advertisements which state that the premiums will not be changed in the future are not acceptable, unless such is the fact.

Any solicitation which states or implies immediate coverage or guaranteed issuance of a policy shall be made only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

Interpretation of Section 3B, Specifically

That part of Section 3B which reads as follows:

> "Where an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, * * *"

attempts to define the type of advertisement which must meet the requirements set forth in the remaining language of the Section.

The words "dollar amount" appearing above should be interpreted as meaning "dollar amount of benefits".

It is possible to have an advertisement which does not specifically mention dollar, time or cost, but accomplishes the same objective by indirection. For example, if there were a hospital and surgical expense policy which paid all incidental hospital expenses, it might be advertised as follows: "When you are covered under our hospital and surgical expense policy, we pay all your incidental hospital expenses". Or an advertisement of a major medical expense policy may truthfully promise to pay 75% of hospital, medical and surgical expenses in excess of the deductible. In both of these examples, language is employed which is sufficiently specific to indirectly disclose to the reader the dollar amount to which he may become entitled. The language of the rule mentioned above, to-wit: "specific policy benefit or the loss for which such benefit is payable" was inserted to describe this type of advertisement.

As was noted in the "Basic Principles of Interpretation of Bulletin", advertisements generally fall within three categories. To properly

apply the philosophy expressed in the first paragraph of the "Basic Principles", the meaning of Section 3B must be examined in the light of each category. The first category of advertisements includes those which are the direct or principal sales inducements and are designed to invite offers to contract, i.e., clearly attempt to persuade the reader or listener to purchase the policy or policies advertised. When such an advertisement mentions dollar amount or time limit of benefits or cost of policy or policy benefits, it is always subject to the limitations imposed by the mandatory portion of Section 3B.

The second category of advertisements includes those designed to attract the reader's interest in the policy or policies advertised so that he will inquire for further details and information. This type of advertisement usually describes benefits broadly. It may make some mention of dollar amount, time limits or cost. Such mention, however, does not in itself mean that the requirements of Section 3B are applicable if the advertisement clearly falls within the category of an invitation to inquire.

To illustrate the foregoing: A brief television commercial or a direct mail card may state "X company invites you to inquire for full information about its $14 a day hospital expense policy". This advertisement is obviously not in the first category, an invitation to contract, but rather in the second category, an invitation to inquire. The viewer or reader could not reasonably decide to purchase the policy described on the basis of the information given even though it does mention a dollar amount.

But suppose the advertisement states "X company invites you to inquire for full information about its $14 a day hospital expense policy which will cost you only 4 cents a day". Unlike the first example, it is more than a mere invitation to inquire for further details and should fall within the scope of Section 3B. The distinction between the two advertisements is plain, if it is borne in mind, in the examples given that at least two kinds of information are needed by a prospective purchaser to determine whether he wishes to buy. He needs to know (1) what he will get, and (2) what it will cost. If he only knows what he will get without knowing the cost or if he knows only what he must pay without knowing what he will get, his only reasonable course is to seek further information. The principle followed in the above examples is that if those advertisements which fall within the category of an invitation to inquire withhold some facts without which no one

could reasonably decide to buy the policies advertised, such advertisements are not subject to the limitations imposed by Section 3B. It should be recognized that there is no single conclusive test and that each advertisement is weighed individually.

It is also true that if the description of dollar, time or cost is merely for the purpose of identifying the policy, Section 3B should not apply. Conversely, if the mention of dollar, time or cost is for the purpose of doing more than identifying the policy, Section 3B may apply.

Thus, it can be seen that many advertisements falling within the "invitation to inquire" category are not subject to the requirements of Section 3B, but as has been shown, there will be times when their language is such as to make compliance necessary.

The third category of advertisements includes those of an institutional type. Rarely is it likely that dollar amounts, time limits, or costs will be mentioned in this class. Section 3B, therefore, has little or no application to advertisements in this category.

The phrase "no medical examination required" and phrases of similar import referred to in rule 3B(5)(b) may be used, provided that (1) they are modified to indicate that they apply only to the issuance of the policy or to both issuance of the policy and payment of claims, whichever the case may be, (e.g., "No medical examination required to apply"; "No medical examination to apply for the policy or any benefits") and, (2) additional wording is included in close conjunction with the phrases to indicate any time period following the effective date of the policy during which losses traceable to pre-existing conditions are not covered. (E.g., "pre-existing conditions not covered during first .. years the policy is in force".)

We turn now to consideration of the mandatory portion of Section 3B which reads as follows:

> "... it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive".

Where Section 3B applies, it is clear that it is not necessary to disclose all exceptions, reductions and limitations. The following are examples of exceptions, reductions and limitations that generally do affect the basic provisions and "without which the advertisement

would have the capacity and tendency to mislead or deceive". Also included are examples of those that generally are not of sufficient significance to affect the basic provisions or to mislead if omitted. The lists are not intended to be complete and the advertiser should use the lists as guides in determining the character of exceptions, reductions and limitations that do not appear.

List A

Generally Do Affect the Basic Provisions and Without Which the Advertisement Would Have the Capacity and Tendency to Mislead or Deceive

1. War or act of war
2. While in armed services
3. Territorial restriction on coverage within the U.S. and Canada
4. Complete aviation exclusion
5. Self-inflicted injury
6. Injury inflicted by another person
7. Pre-existing sickness or disease
8. Exclusion or reduction for loss due to pre-existing bodily infirmities
9. Exclusion or reduction for loss due to specific diseases, classes of diseases or types of injuries
10. Confinement restrictions in disability policies such as house confinement, bed confinement and confinement to the premises
11. Waiting periods
12. Reduction in benefits because of age

List B

Generally Do Not Affect the Basic Provisions and Without Which the Advertisement Would Not Have the Capacity and Tendency to Mislead or Deceive

1. Suicide, sane or insane
2. Attempted suicide, sane or insane
3. Intentional self-inflicted injury
4. Territorial restriction with no limitation of coverage in the U.S. and Canada
5. Aviation exclusion, except as passenger on commercial airlines
6. Felony or illegal occupation
7. Time limitation on death, dismemberment or commencement of disability following an accident
8. All statutory standard policy provisions, both mandatory and optional
9. Requirement for regular care by a physician
10. Definition of total disability
11. Definition of partial disability
12. Definition of hospital

List A—(Continued)

Generally Do Affect the Basic Provisions and Without Which the Advertisement Would Have the Capacity and Tendency to Mislead or Deceive

13. Any reduction in benefit during a period of disability
14. Workmen's compensation or employers' liability law exclusion
15. Occupational exclusion
16. Violation of law
17. Automatic benefit in lieu of another benefit
18. Confinement in government hospital
19. Maternity
20. Miscarriage
21. Restrictions relating to organs not common to both sexes
22. Restrictions on number of hospital hours before benefit accrues
23. Insanity, mental diseases or disorders, or nervous disorder
24. Dental treatment, surgery or procedures
25. Cosmetic surgery

List B—(Continued)

Generally Do Not Affect the Basic Provisions and Without Which the Advertisement Would Not Have the Capacity and Tendency to Mislead or Deceive

13. Definition of specific total loss
14. Definition of injury
15. Definition of physician or surgeon
16. Definition of nurse
17. Definition of recurrent disability
18. Definition of commercial air travel
19. Definition classifying hernia as a sickness
20. Rest cures
21. Diagnoses
22. Prosthetics
23. Cosmetic surgery, except as a result of accident occurring while policy is in force
24. Dental treatment, surgery or procedures, except for injury to sound natural teeth occurring while policy is in force
25. Bacterial infection, except pyogenic infection occurring through cut or wound caused by injury

List A—(Continued)
Generally Do Affect the Basic Provisions and Without Which the Advertisement Would Have the Capacity and Tendency to Mislead or Deceive

26. While intoxicated or under the influence of narcotics, or other language not in conformity with the uniform policy provision law
27. Unemployed persons
28. Retired persons
29. While handling explosives or chemical compounds
30. While or as a result of participating in speed contests
31. While or as a result of riding a motorcycle or motorcycle attachment
32. While or as a result of participating in professional athletics
33. While or as a result of participating in certain specified sports
34. While or as a result of serving as a volunteer fireman or in other hazardous occupations
35. Riot or while participating in a riot
36. Ptomaine poisoning
37. Gas or poisonous vapor
38. Sunstroke or heat prostration
39. Freezing
40. Poison ivy or fungus infection
41. Requirement of permanent disability

List B—(Continued)

Generally Do Not Affect the Basic Provisions and Without Which the Advertisement Would Not Have the Capacity and Tendency to Mislead or Deceive

26. Eye examination for fitting of glasses, or hearing aids
27. Exclusion of sickness or disease in a policy providing only accident coverage
28. Exclusion for miscarriage in policy providing only accident coverage

Some advertisements of the first category relating to hospital indemnity coverage where used in newspaper and magazine advertising, which contain an application form or otherwise invite offers to contract, may disclose exceptions, reductions or limitations as required by Section 3B, but the advertisement is so lengthy as to obscure the disclosure of the pre-existing condition exclusion, the limitation on the payment of benefits for the first . . days of hospital confinement if any, or the fact that the policy does not pay physician's benefits. In such circumstances, special emphasis shall be given to such applicable exceptions, reductions or limitations in a prominent or clearly noticeable area in such advertisement.

Section 4. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability and Termination

An advertisement which refers to renewability, cancellability or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums, because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

Interpretation of Section 4

Section 4 is divided into two parts. The first part defines the type of advertisement that is subject to the restrictions imposed upon such advertisement by the second part.

The first part of Section 4 reads as follows:

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

Three distinct categories of advertisements are described:

In the first category is that type of advertisement "which re-

fers to renewability, cancellability or termination of a policy". This language was inserted in the Section to prevent the advertisement of a non-cancellable or guaranteed renewable insurance policy in such a manner as to overstate the non-cancellable or guaranteed renewable feature. For example, suppose a non-cancellable and guaranteed renewable to age 65, at a level premium, loss-of-time policy was advertised briefly in the following manner: "X company sells a non-cancellable loss-of-time benefits policy". In this simple advertisement the Insurer has chosen to discuss renewability or as the rule puts it "refers to renewability", etc. It is, therefore, bound by the provisions of Section 4 and the language of its advertisement would have to read something like "X company sells a non-cancellable and guaranteed renewable to age 65 loss-of-time benefits policy". Statements like "This policy safeguards your renewal" or "yours for as long as you want it" are further examples of advertisements which refer to renewability so as to make them subject to the limitation imposed by Section 4. It is important to note that the restriction applies only to advertisements of specific policies.

In the second category is that type of advertisement "which refers to a policy benefit". In determining what is meant by the phrase "refers to a policy benefit", we must keep in mind that "Basic Principles of Interpretation of Bulletin". It will be recalled that these principles divided advertisements into three classes: "offers to contract", "invitations to inquire" and "institutional advertisements".

"Offers to contract" invariably describe benefits in considerable detail because their purpose is to convince the reader that he should purchase the policy described. This type of advertisement is always subject to the requirements of Section 4.

"Invitations to inquire" are designed to attract the reader's interest in the policy so that he will inquire as to further details and information. Often these are brief advertisements used in television and radio commercials, pre-call letters, newspapers or magazines. The limitations imposed by Section 4 should apply to this type of advertisement to the same extent as that to which the limitations imposed by Section 3B were found to apply to them. In other words, the language of the rule "refers to a policy benefit" should be interpreted to mean that an "invitation to

inquire" which discusses dollar, time or cost extensively is subject to the limitations imposed by Section 4. If, however, the mention of dollar, time or cost is such that the advertisement withholds some facts without which no one could reasonably decide to buy the policies advertised, the advertisement is not subject to the limitations imposed by Section 4. This is an application to Section 4 of the principle established in the interpretation of Section 3B, as previously stated herein.

The third class outlined in the Basic Principles of Interpretation of this Bulletin is the institutional type advertisement. It is unlikely that this type of advertisement will ever be subject to Section 4 unless it "refers to renewability", etc. of a specific policy. As was discussed in an earlier paragraph, it should be remembered that every advertisement, regardless of its class, is always subject to Section 4 if it refers "to renewability, cancellability or termination of a policy".

In the third category is that type of advertisement "which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy".

There are advertisements which do not "refer to renewability", etc. nor "refer to a policy benefit", but nevertheless are subject to Section 4.

These are advertisements which imply permanency by a discussion of age. For example, an advertisement of a cancellable policy may say: "Coverage—Ages 18 to 70", or "does not terminate at any specific age, no reduction in benefits as you grow older". Although technically truthful when standing alone, the above type of statement in an advertisement may imply permanency unless properly qualified. It is not the intent of these rules, however, to bring all statements about eligibility age under Section 4 but only those statements which have the tendency and capacity to mislead as to the premanence and continuability of the protection. Simply statements disclosing the company's underwriting policy with respect to age such as "issued to people between the ages of 55 and 65" do not bring the advertisement under Section 4. It is essential for the advertiser to use words in describing the issue ages which cannot be construed to imply that the ages refer to renewability. One example has been given. Another approach

would be to say something like "For sale to persons between 18 and 59 years of age".

This completes a determination of the type of advertisement subject to Section 4. The remainder of Section 4 relates to compliance and reads as follows:

> " * * * 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."

The word "provisions" used above does not contemplate that the policy language must be used. Rather, the rule requires a summary of the pertinent information with respect to renewability, etc. This word was used merely to distinguish it from the word "conditions" used later in the paragraph.

In applying Section 4, the advertiser of a cancellable or optionally renewable policy is concerned only with the requirement that a summary of policy renewal provisions be set forth and is not concerned with that part of the rule which deals with "qualifying conditions". Advertisements of cancellable policies that come under Section 4 must state that the contract in question is cancellable or renewable at the option of the company, as the case may be. For example, a policy which is cancellable should be advertised in a manner similar to "This policy can be cancelled by the company at any time". Policies which are renewable at the company's option should be advertised in a manner similar to "Renewable at the option of the Company", or "The company has the right to refuse renewal of this policy" or "The acceptance of a renewal premium is optional with the company".

With respect to the non-cancellable or guaranteed renewable type policy, the rule requires two things, first that a summary of the policy provisions with respect to renewability be set forth and, second, that anything that modifies the permanent character of the policy be set forth. The disclosure of provisions relating to renewability, etc., will require the use of language such as "non-cancellable", "guaranteed renewable", "non-cancellable and guaranteed renewable" or "renewable at the option of the insured".

In addition to the requirement for disclosure of "provisions relating to renewability", etc., the rule requires a statement of the qualifying

conditions which constitute limitations on the permanent nature of the coverage. These customarily fall into three categories (1) age limits, (2) reservation of a right to change premiums and (3) the establishment of aggregate limits. For example, "non-cancellable and guaranteed renewable" does not fulfill the requirement of Section 4. If the policy contains a terminal insurance age of 65, a proper statement would be "Non-cancellable and guaranteed renewable to age 65". An advertisement is not required to distinguish among terminations (a) on the insured's birthday, (b) on the policy anniversary nearest or following such date, (c) on the premium due date following such date, or (d) any similar method of defining the termination date. If a right to change premiums is reserved, the statement must be amplified to language similar to "guaranteed renewable to age 65 but the company reserves the right to change premium rates on a class basis". If the contract contains an aggregate limit after which no further benefits are payable, the above statement must be amplified with the phrase "subject to maximum dollar amounts payable by the company as set out in the policy", or similar language. It should be borne in mind that one policy may have one or more of the three basic limitations. The advertisement must show those which the policy contains.

In addition to the above basic requirements, the rule necessitates a disclosure that "* * * any modification of benefits, losses covered or premiums, because of age or for other reasons * * *". Because of the context of Section 4 as a whole, this must be interpreted to mean only "modification of benefits", etc. which detract from the permanent nature of the coverage being offered. In other words, the rule is not a repetition of Section 3B which requires the setting forth of certain limitations, exceptions and reductions where an advertisement describes benefits extensively. Rather, Section

THIS PLAN WILL PAY YOU

Accident Benefits

$1,000.00 for accidental death.

$ 200.00 per month for total disability, beginning with the first day of such disability for as long as 5 years.

$ 100.00 per month for partial disability, beginning with the first day of such disability or immediately following total disability for as long as 6 months.

Sickness Benefits

$ 200.00 per month for total disability, beginning with the 8th day of such disability for as long as 2 years.

Hospital and Surgical Benefits

$ 10.00 per day during hospital confinement from first day of such confinement for as long as 90 days.

$5.00 to $200.00 under comprehensive surgical schedule specifying the maximum payment for each operation listed.

The maximum payment will vary depending upon the nature of your operation.

Total premium $..... per .....

The benefits described do not cover injury or disease (1) existing before the policy date; (2) caused by war; or (3) occurring or commencing while in the Armed Forces.

The acceptance of a renewal premium is optional with the Company. Benefits payable are reduced 50% for disability commencing or loss occurring after attainment of age 65.

The second alternative would permit the disclosure of exceptions, limitations, reductions and other restrictions in some portion of the advertisement which is not in close conjunction with the provisions describing specific policy benefits, provided they are properly captioned.

For example, assuming that the last two paragraphs of the preceding example were separated from the description of the specific policy benefits by other material so as not to be in close conjunction with the benefit descriptions, then such paragraphs would have to be appropriately captioned as follows:

LIMITATIONS

The benefits described do not cover injury or disease: (1) existing before the policy date; (2) caused by war, or (3) occurring or commencing while in the Armed Forces.

The acceptance of a renewal premium is optional with the Company. Benefits payable are reduced 50% for disability commencing or loss occurring after attainment of age 65.

The particular caption used above need not be used. For example, instead of the caption "Limitations", you might use "Exceptions", "Exclusions", "Not Covered", "Restrictions", "Extent of Coverage", or any other caption or combination of captions which would serve as notice of the exceptions, limitations or reductions for policy coverage.

An example of incorporating the amounts payable per day under a hospital indemnity policy which sets forth the total amount of indemnity payable would be: "This policy provides benefits in the amount of $600 per month at the rate of $20 per day when confined in a hospital".

Because of the different types of advertising media used to sell and promote accident and sickness insurance and the tremendous number and variety of techniques employed in each media, it is not practical to establish minimum and maximum requirements with respect to the size and style of type. Therefore, the "equal prominence" test was not employed in the rule nor should it be applied in the interpretation of the rule.

In summary, the purpose of Section 5 is to make certain that the information required to be disclosed is presented clearly and in such a manner as to be readily noticed.

Section 6. Testimonials

Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement including such statements is subject to all of the provisions of these rules.

Interpretation of Section 6

The purpose of this Section is to establish certain requirements to be observed where using testimonials in advertisements. Considering the rule in its component parts: first; all testimonials must be genuine. They must not be fictitious. Under this rule, the manufacturing, unscrupulous editing or "doctoring up" of a testimonial is clearly prohibited as being false and misleading.

Next, the testimonial must represent the current opinion of the author. Where a testimonial is submitted in good faith, setting forth

appreciation for benefits and favorable treatment received from an insurer, it follows, as a natural corollary that the use of such testimonial must be limited to those instances where the testimonial, no matter when written, is still representative of the current opinion of the author. In other words, at the time of publication, the author should still believe what he had originally stated. The purpose of this requirement is to eliminate, as misleading, the use of testimonials in those cases where it is reasonable to presume that the views expressed in the testimonial do not correctly reflect the current opinion of the author. It is conceivable that the writer of a testimonial, for one reason or another, might change his mind and no longer entertain the views originally expressed. This does not mean, per se, that an insurer, in each instance, is required to check with the author each time his testimonial is used to ascertain that the views expressed have not been altered; but an insurer may not use a testimonial when it has information indicating a substantial change of view on the part of the author. A testimonial should be checked before use in those instances where a change of views might be probable or reasonable to assume, particularly by virtue of the passage of a considerable period of time. In this connection, an insurer should not use a testimonial for more than two years after the date it is originally given or following a prior confirmation without obtaining a confirmation from the author that the testimonial represents his then current opinion.

This Section 6, furthermore, prohibits testimonials which do not correctly reflect the present practices of the insurer. In other words, a testimonial even though recently written and otherwise usable under this Section, cannot be used if its statements describe practices no longer followed by the insurer. Such a testimonial would clearly be misleading.

A further possible misuse of testimonials is prohibited under the third part of the Section in which it is required that the testimonial must be applicable to the policy or benefit being advertised. This is intended to eliminate the using of a testimonial given in connection with one policy to advertise another policy where such use would be misleading. This, of course, does not apply to testimonials of a general nature in which the author expresses appreciation for courteous treatment received, the prompt payment of benefits, and so forth.

Finally, this Section states that the testimonial must be accurately reproduced. Any change or omission which distorts the plain meaning

or intent of the testimonial as originally written is prohibited. However, a testimonial need not stand or fall in its entirety as originally written. Certainly, if a testimonial should reveal information of a personal nature or contain a statement that is not absolutely correct insofar as company procedures or practices are concerned, an insurer may omit such matter from a testimonial and then use the residual matter in its advertising, provided, of course, that in so doing the original view is not distorted. Also, a portion or a segment of a testimonial can be used provided such use does not result in a meaning different from that when such excerpt appeared in context in the original testimonial. The basic purpose is to prohibit distortion of the original views expressed in the testimonial in such manner that their use would be misleading.

The purpose of the last sentence of Section 6 is to place responsibility for the truthfulness and accuracy of the testimonial on the insurer, and to prevent an insurer from avoiding the other requirements of the rules by the exclusive use of testimonial advertising. For example, if a testimonial refers to the dollar amount of any benefit, period of time for which any benefit is payable, or the cost of any benefit or policy, it would fall within the scope of Section 3B and other applicable sections of these rules in the same manner as any other advertisement. However, a mere recital of the amount a company had paid to a claimant over a designated period of time in connection with a specific claim would not in itself render the testimonial subject to Section 3B.

Where the amount of aggregate benefits which have been paid to a particular claimant are recited in a testimonial, the statement of this claim payment should not have the capacity and tendency to mislead a reader as to the true nature of the insurance coverage for which the payment was made. For example, if the author of a testimonial owned a loss-of-time policy which had paid him $600 loss-of-time benefits for a three-month disability, it might create the impression that the policy paid for hospital expenses if he said "When I was in the hospital for three months the company paid me $600.00".

Section 7. Use of Statistics

An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information, relating to any insurer or policy, shall not be used unless it accu-

rately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact.

Interpretation of Section 7

If the term "loss ratio" is quoted and used, it should be based on (a) benefits paid and premiums received, or (b) losses incurred and premiums earned.

An advertisement representing the dollar amounts of claims paid must also indicate the period over which such claims have been paid.

Section 8. Inspection of Policy

An offer in an advertisement of free inspection of policy or an offer of a premium refund is not a cure for misleading or deceptive statements contained in such advertisement.

Interpretation of Section 8

No comment believed necessary.

Section 9. Identification of Plan or Number of Policies

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

B. Where an advertisement refers to various benefits which may be contained in 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.

Interpretation of Section 9

No comment believed necessary.

Section 10. Disparaging Comparisons and Statements

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

Interpretation of Section 10

No comment believed necessary.

Section 11. Jurisdictional Licensing

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

Interpretation of Section 11

An advertisement which contains testimonials from persons who reside in a state in which the insurer is not licensed or which refers to claims of persons residing in states in which the insurer is not licensed implies licensing in those states and therefore is in violation of this Section unless the advertisement otherwise states.

Section 12. Identity of Insurer

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

Interpretation of Section 12

This Section prohibits the use of the name of an agency or "..... Underwriters" or "..... Plan" in such type, size and location as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

This Section does not prohibit the use of the initials, the trade name or a portion of the corporate name of the insurer unless such use has the capacity and tendency to mislead or deceive as to the true identity of the insurer, in which event the insurer must set forth its full name and its home or principal office, i.e., city and state.

This Section prohibits an insurer from using an address such as to mislead or deceive as to its true identity or licensing status.

This Section prohibits an insurer from using envelopes or stationery which have printed thereon any name, service mark, slogan, symbol or other device which has the capacity or tendency to mislead or deceive as to imply that the insurer or the policy advertised is

connected with a governmental agency such as the Social Security Administration or the Veterans Administration.

Section 13. Group or Quasi-Group Implications

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

Interpretation of Section 13

This Section prohibits the use of representations to any segment of individuals that a particular policy or coverage is available only to that or similar segment of individuals as preferred risks, where actually such policy or coverage is available to eligible members of the public at large. There is no prohibition against advertising that a policy or coverage is available to only a particular segment of individuals such as professional men, business men, etc., as preferred risks where in actual underwriting practice such is the fact.

This Section prohibits the solicitation 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 where in fact the policy being advertised is sold only on an individual basis at regular rates.

Section 14. Introductory, Initial or Special Offers

An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact.

Interpretation of Section 14

This Section prohibits any statements or implication to the effect that only a specific number of policies will be sold or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless such is the fact.

This Section prohibits any statements or implication in the same advertising media 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, or that an individual will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless such is the fact.

An applicant should be able to determine from the advertising text the cost of his insurance. If the insurer charges an initial premium that differs from the renewal premium on the same mode, both the initial and renewal premiums must be shown in the advertisement together with an increase in rate or reduction in coverage because of age.

Section 15. Approval or Endorsement by Third Parties

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

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

Interpretation of Section 15A

The word "approved" shall not be interpreted or used so as to permit an insurer to state or imply in an advertisement that a governmental agency has endorsed or recommended the insurer, its policies or its financial condition.

This Section does not prohibit an insurer from reproducing a portion of a filed report of examination of such insurer, conducted by one or more insurance departments, provided the portion reproduced is not taken out of context and thereby rendered untrue or misleading.

Interpretation of Section 15B

This Section requires current and valid endorsements. It would prohibit representations that a policy or plan of an insurer is a community health plan or program unless such policy or plan has been adopted by the particular community government for the residents of that community or has been so designated by law.

Section 16. Service Facilities

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

Interpretation of Section 16

No comment believed necessary.

Section 17. Statements About an Insurer

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

Interpretation of Section 17

Among other things, this Section prohibits insurers, which have been organized for only a brief period of time, from advertising to the effect that they are "old" or from making similar untrue representations.

Illustrations of a "Home Office" building should not be used in a manner which will be misleading with respect to the actual magnitude of the insurer's business.

J. O. WIGEN
Commissioner of Insurance