

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 100. Advertisement of Medicare Supplement Insurance

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 2. AUTHORITY

This Rule is issued pursuant to the authority vested in the Commissioner by Ark. Code Ann. §23-61-108, §23-66-206, §23-66-207, §23-76-125, §25-15-203 and other applicable provisions of the Arkansas Insurance Code."

"Section 18. Severability Provision.

If any section or portion of a section of this Rule, or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the Rule, or the applicability of such provision to other persons or circumstances, shall not be affected thereby."

"Guideline 21

The effective date of this Rule shall be January 1, 1989."

Subpart 1. Generally

23 CAR § 100-101. Purpose.

(a) The purpose of this part is to:

(1) Provide prospective purchasers with clear and unambiguous statements in the advertisement of Medicare Supplement Insurance; and

(2) Ensure the clear and truthful disclosure of the benefits, limitations, and exclusions of policies sold as Medicare Supplement Insurance.

(b) This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare Supplement Insurance in a manner that prevents unfair, deceptive, and misleading advertising and is conducive to accurate presentation and description of Medicare Supplement Insurance to the insurance buying public through the advertising media and material used by insurance agents and companies.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-102. Applicability.

(a) This part shall apply to any advertisement of Medicare Supplement Insurance as that term is defined herein, unless otherwise specified in this part, that the insurer 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, agent, broker, producer, or solicitor, as those terms are defined in the Insurance Code of this state.

(b)(1) Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all of its Medicare Supplement Insurance advertisements.

(2) All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurers benefiting directly or indirectly from their dissemination.

(c)(1) Advertising materials, other than an institutional advertisement or an invitation to inquire, that are reproduced in quantity shall be identified by form numbers or other identifying means.

(2) Such identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications, or other materials used by the insurer.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-103. Definitions.

As used in this part:

(1)(A) An "advertisement" shall include:

(i) Printed and published material, audio visual material, and descriptive literature used by or on behalf of an insurer in:

- (a) Direct mail;
- (b) Newspapers;
- (c) Magazines;
- (d) Radio scripts;
- (e) TV scripts;
- (f) Billboards; and
- (g) Similar displays;

(ii) Descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker, or solicitor for presentation to members of the insurance buying public, including but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters, and lead generating devices as herein defined; and

(iii) Prepared sales talks, presentations, and material for use by agents, brokers, producers, and solicitors, whether prepared by the:

- (a) Insurer;
- (b) Agent;
- (c) Broker;
- (d) Producer; or
- (e) Solicitor.

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

(C) "Advertisement" does not include:

(i) Material to be used solely for the training and education of an insurer's employees, agents, or brokers;

(ii) Material used in-house by insurers;

(iii) Communications within an insurer's own organization not intended for dissemination to the public;

(iv) Individual communications of a personal nature with current policyholders other than material urging such policyholders to increase or expand coverages;

(v) Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;

(vi) Court-approved material ordered by a court to be disseminated to policyholders; or

(vii) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet;

(2) "Certificate" means any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this state;

(3)(A) "Exception" means any provision in a policy whereby coverage for a specified hazard is entirely eliminated.

(B) It is a statement of a risk not assumed under the policy;

(4) "Institutional advertisement" means an advertisement having as its sole purpose the promotion of the:

(A) Reader's, viewer's, or listener's interest in the concept of Medicare Supplement Insurance; or

(B) Insurer as a seller of Medicare Supplement Insurance;

(5) "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, health maintenance

organization, hospital medical service corporation, prepaid health plan, and any other legal entity that is:

(A) Defined as an "insurer" in the Insurance Code of this state; and

(B) Engaged in the advertisement of itself or Medicare Supplement Insurance;

(6) "Invitation to contract" means an advertisement that is neither an institutional advertisement nor an invitation to inquire;

(7) "Invitation to inquire" means an advertisement having as its objective the creation of a desire to inquire further about Medicare Supplement Insurance that is limited to a brief description of coverage and that shall contain a provision in the following or substantially similar form:

"This policy has (exclusions) (limitations) (reductions of benefits) (terms under which the policy may be continued in force or discontinued). For costs and complete details of the coverage, call (or write) your insurance agent or the company (whichever is applicable).";

(8) "Lead-generating device" means any communication directed to the public that, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare Supplement Insurance;

(9) "Limitation" means any provision that restricts or limits coverage under the policy other than an exception or a reduction;

(10) "Medicare" means "The Health Insurance For the Aged Act, Title XVIII of The Social Security Amendments of 1965 as Then Constituted or Later Amended" or Title I, Part 1, of Public Laws 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the "Health Insurance for the Aged Act", as then constituted and any later amendments or substitutes thereof or words of similar import;

(11) "Medicare Supplement Insurance" means a group or individual policy of disability insurance or a subscriber contract of a hospital and medical service corporation or health maintenance organization that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age;

(12) "Person" means any:

- (A) Natural person;
- (B) Association;
- (C) Organization;
- (D) Partnership;
- (E) Trust;
- (F) Group;
- (G) Discretionary group;
- (H) Corporation; or
- (I) Other entity; and

(13)(A) "Reduction" means any provision that reduces the amount of the benefits.

(B) A risk of loss is assumed, but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-104. Method of disclosure of required information.

All information required to be disclosed by this part shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure, or presented in an ambiguous manner or fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-105. Form and content of advertisements.

(a)(1) The format and content of a Medicare Supplement Insurance advertisement shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.

(2) Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(b)(1) Advertisements shall be truthful and not misleading in fact or in implication.

(2) Words or phrases whose meanings are clear only by implication or by the consumer's familiarity with insurance terminology shall not be used.

(c)(1) An insurer must clearly identify its Medicare Supplement Insurance policy as an insurance policy.

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

(d) No insurer, agent, broker, producer, solicitor, or other person shall solicit a resident of this state for the purchase of Medicare Supplement Insurance in connection with or as the result of the use of any advertisement by such person or any other person, where the advertisement:

(1) Contains any misleading representations or misrepresentations or is otherwise untrue, deceptive, or misleading with regard to the:

(A) Information imparted;

(B) Status, character, or representative capacity of such person; or

(C) True purpose of the advertisement; or

(2) Otherwise violates the provisions of this part.

(e) No insurer, agent, broker, producer, solicitor, or other person shall solicit residents of this state for the purchase of Medicare Supplement Insurance through the use of a true or fictitious name that is deceptive or misleading with regard to the:

(1) Status, character, or proprietary or representative capacity of such person;

or

(2) True purpose of the advertisement.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-106. Advertisements of benefits, losses covered, or premiums payable.

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

(1)(A) No advertisement shall omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such words, phrases, statements, references, or illustrations has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any:

(i) Policy benefit payable;

(ii) Loss covered; or

(iii) Premium payable.

(B) The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

(2) No advertisement shall contain or use words or phrases such as "all", "full", "complete", "comprehensive", "unlimited", "up to", "as high as", "this policy will help fill some of the gaps that Medicare and your present insurance leave out", "this policy pays all that Medicare doesn't", or similar words and phrases in a manner that exaggerates any benefit beyond the terms of the policy.

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

(B) The insurance program must be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership, if that is the case.

(4)(A) An advertisement shall not contain descriptions of policy limitations, exceptions, or reductions worded in a positive manner to imply that it is a benefit, such as describing a waiting period as a "benefit builder" or stating "even preexisting conditions are covered after six (6) months".

(B) 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, or reductions of the policy offered.

(5) An advertisement of Medicare Supplement Insurance sold by direct response shall not state or imply that "because no insurance agent will call and no commissions will be paid to 'agents' it is a low cost plan" or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in marketing by direct response.

(b) Exceptions, reductions, and limitations.

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

(2) When a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement that is subject to the requirements of subdivision (b)(1) of this section shall disclose the existence of such periods.

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

(c) Preexisting conditions.

(1)(A) An advertisement that 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.

(B) The use of the term "preexisting condition" without an appropriate definition or description shall not be used.

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

(B) This part prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue".

(C) If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required.

(3)(A) 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 that reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature.

(B) 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 six (6) months after the issue date for a disease or physical condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the policy issue date?

_____ YES

(C) Or substantially the following statement:

I understand that the policy applied for will not pay benefits for any loss incurred during the first six (6) months after the issue date due to a disease or physical condition for which I received medical advice or for which treatment was recommended by or received from a physician within six (6) months before the issue date.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-107. Necessity for disclosing policy provisions relating to renewability, cancellability, and termination.

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

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-108. Testimonials or endorsements by third parties.

(a)(1) Testimonials and endorsements used in advertisements must:

- (A) Be genuine;
- (B) Represent the current opinion of the author;
- (C) Be applicable to the policy advertised; and
- (D) Be accurately reproduced.

(2) The insurer, in using a testimonial or endorsement, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of this part.

(3) When a testimonial or endorsement is used more than one (1) year after it was originally given, a confirmation must be obtained.

(b) A person shall be deemed a "spokesperson" if the person making the testimonial or endorsement:

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

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

(3) Has any person in a policymaking position who is affiliated with the insurer in any of the above described capacities; or

(4) Is in any way directly or indirectly compensated for making a testimonial or endorsement.

(c)(1) The fact of a financial interest or the proprietary or representative capacity of a spokesperson shall be:

(A) Disclosed in an advertisement; and

(B) Accomplished in the introductory portion of the testimonial or endorsement in the same form and with equal prominence thereto.

(2) If a spokesperson is directly or indirectly compensated for making a testimonial, endorsement, or appraisal, such fact shall be disclosed by use of the phrase "Paid Endorsement" or words of similar import in a type style and size that is at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger.

(3) In the case of television or radio advertising, the required disclosure must be:

(A) Accomplished in the introductory portion of the advertisement; and

(B) Given prominence.

(d) The disclosure requirements of this part shall not apply where the sole financial interest or compensation of a spokesperson for all testimonials or endorsements made on behalf of the insurer consists of the payment of union "scale" wages required by union rules and if the payment is actually for such "scale" for TV or radio performances.

(e)(1) An advertisement shall not state or imply that an insurer or a Medicare Supplement Insurance policy has been approved or endorsed by any individual, group of individuals, society, association, organization, or other entity, unless:

(A) Such is the fact; and

(B) Any proprietary relationship between an organization and the insurer is disclosed.

(2) 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.

(3) If the insurer or an officer of the insurer formed or controls the association or holds any policymaking position in the association, that fact must be disclosed.

(f)(1) When a testimonial refers to benefits received under a Medicare Supplement Insurance policy the specific claim data, including claim number, date of loss, and other pertinent information, shall be retained by the insurer for inspection for a period of four (4) years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time.

(2) The use of testimonials that do not correctly reflect the present practices of the insurer or that are not applicable to the policy or benefits being advertised is not permissible.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-109. Use of statistics.

(a)(1) 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:

(A) Use irrelevant facts; and

(B) Be used unless it accurately reflects all of the relevant facts.

(2) Such an advertisement shall not imply that such statistics are derived from a policy advertised unless such is the fact and when applicable to other policies or plans shall specifically so state.

(3) An advertisement shall specifically identify the Medicare Supplement Insurance policy to which statistics relate and, where statistics are given which are applicable to a different policy, it must be stated clearly that the data does not relate to the policy being advertised.

(4)(A) An advertisement using statistics that describe the insurer, such as assets, corporate structure, financial standing, age, product lines, or relative position in the insurance business, may be irrelevant and, if used at all, must be used with extreme caution because of their potential for misleading the public.

(B) As a specific example, an advertisement for Medicare Supplement Insurance policy that refers to the amount of life insurance which the company has in force or the amounts paid out in life insurance benefits is not permissible unless the advertisement clearly indicates the amount paid out for each line of insurance.

(b)(1) An advertisement shall not:

(A) Represent or imply that claim settlements by the insurer are "liberal" or "generous" or use words of similar import; or

(B) State or imply that claim settlements are or will be beyond the actual terms of the contract.

(2) An unusual amount paid for a unique claim for the policy advertised is misleading and shall not be used.

(c) The source of any statistics used in an advertisement shall be identified in such advertisement.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-110. Disparaging comparisons and statements.

(a)(1) An advertisement shall not:

(A) Directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers;

(B) Disparage competitors or their:

(i) Policies;

(ii) Services; or

(iii) Business methods; and

(C) Disparage or unfairly minimize competing methods of marketing insurance.

(2) This requirement shall not preclude health maintenance organizations, prepaid health plans, and other direct service organizations from explaining how their health benefits products differ from indemnity insurance products.

(b) An advertisement shall not contain statements such as "no red tape" or "here is all you do to receive benefits".

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

(d) Advertisements that state or imply that an insurer's premiums are lower or that its loss ratios are higher because its organizational structure differs from that of competing insurers are unacceptable.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-111. Jurisdictional licensing and status of insurer.

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

(b) An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are

approved, endorsed, or accredited by any division or agency of this state or the United States Government.

(c)(1) An advertisement shall not imply that approval, endorsement, or accreditation of policy forms or advertising has been granted by any division or agency of the state or federal government.

(2) "Approval" of either policy forms or advertising shall not be used by an insurer to imply or state that a governmental agency has endorsed or recommended the insurer, its policies, its advertising, or its financial condition.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-112. Identity of insurer.

(a)(1) The name of the actual insurer shall be stated in all of its advertisements.

(2) The form number or numbers of the policy advertised shall be stated in an advertisement that is an invitation to contract.

(3) An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device that, with or without disclosing the name of the actual insurer, would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

(b) No advertisement shall use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to any combination of words, symbols, or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of such a nature, that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, county, state, or federal government.

(c) Advertisements, envelopes, or stationery that employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies or other insurers are not permitted if they may confuse the public into believing that the:

(1) Advertised coverages are somehow provided by or are endorsed by such governmental agencies or such other insurers; or

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

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

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

(f)(1) No advertisement may incorporate the word "Medicare" in the title of the plan or policy being advertised unless, wherever it appears, said word is qualified by language differentiating it from Medicare.

(2) Such an advertisement, however, shall not use:

(A) The phrase "Medicare Department of the _____ Insurance Company"; or

(B) Similar language of similar import.

(g) No advertisement shall be used that fails to include a disclaimer to the effect of "Not connected with or endorsed by the U.S. Government or the Federal Medicare Program".

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

(i) The use of letters, initials, or symbols of the corporate name or a 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.

(j) The use of the name of an agency or “ _____ Underwriters” or “ _____ Plan” in type, size, and location so as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer is prohibited.

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

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

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

(n) No insurer may use in the trade name of its insurance policy any terminology or words so similar to the name of a governmental agency or governmental program as to have the tendency to confuse, deceive, or mislead a prospective purchaser.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-113. Group or quasi-group implications.

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

(b) This part prohibits the solicitation of a particular class, such as governmental employees, by use of advertisements that 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.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-114. Introductory, initial, or special offers.

(a)(1)(A) An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory,

initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact.

(B) An advertisement shall not contain phrases describing an enrollment period as "special", "limited", or similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising Medicare Supplement Insurance.

(2)(A) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three (3) months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period.

(B) The advertisement shall indicate the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days from the date that such enrollment period is advertised for the first time.

(C)(i) This part applies to all advertising media, i.e., mail, newspapers, radio, television, magazines, and periodicals, by any one (1) insurer.

(ii) It is not applicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance.

(iii) The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

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

(4)(A) The phrase "a particular insurance product" in subdivision (a)(2) of this section means an insurance policy that provides substantially different benefits than those contained in any other policy.

(B) Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting

period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(b)(1) An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium.

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

(B) The term "juxtaposition" means beside or immediately above or below.

(c) Special awards, such as a "safe driver award", shall not be used in connection with advertisements of Medicare Supplement Insurance.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-115. Statements about an insurer.

(a) An advertisement shall not contain statements that are untrue in fact or by implication misleading with respect to the assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business.

(b) An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the:

- (1) Purpose of the recommendation; and
- (2) Limitations of the scope and extent of the recommendation.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-116. Enforcement procedures.

(a) Advertising file.

(1) Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of its individual policies and typical printed, published, or prepared advertisements of its blanket, franchise, and group policies hereafter disseminated in this or any other state, whether or not licensed in such other state, with a notation attached to each such advertisement that shall indicate the manner and extent of distribution and the form number of any policy advertised.

(2) Such file shall be available for inspection by the State Insurance Department.

(3) All such advertisements shall be maintained in said file for a period of either four (4) years or until the filing of the next regular report of examination of the insurer, whichever is the longer period of time.

(b) **Certificate of compliance.** Each insurer required to file an annual statement that is now or that hereafter becomes subject to the provisions of this part must file with the department, with its annual statement, a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that, to the best of his or her knowledge, information, and belief, the advertisements that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this part and the insurance laws of this state as implemented and interpreted by this part.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

23 CAR § 100-117. Filing requirements for advertising.

Every insurer, health care service plan, or other entity providing Medicare Supplement Insurance or benefits in the state shall provide a copy of any Medicare supplement advertisement intended for use in this state, whether through written, radio, or television medium, to the Insurance Commissioner of this state for review or

approval by the commissioner not less than thirty (30) days prior to the date the insurer desires to use the advertisement.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-76-125.

Appendix A. Interpretive Guidelines

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/186/23CARpt.100Appendix.pdf>