

**Title 23. Public Utilities and Regulated Industries**  
**Chapter I. State Insurance Department, Department of Commerce**  
**Subchapter B. Life, Health, and Accident**  
**Part 82. Advertisements of Disability Insurance**

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

"SECTION 2. Authority

The authority for this rule is the power given to the Commissioner by Ark. Code Ann. §25-15-203, §25-15-204, §23-61-108, §§23-66-201 et seq., §§23-74-101 et seq., §§23-75-101 et seq., §§23-76-101 et seq., §§23-85-101 et seq., §§23-86-101 et seq., and other applicable provisions of the Arkansas Code.

SECTION 3. Effective Date

This rule shall be effective September 2, 1991."

"SECTION 21. 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."

**Subpart 1. Generally**

**23 CAR § 82-101. Purpose.**

(a) The purpose of this part is to protect prospective purchasers with respect to the advertisement of disability insurance in the same manner as the rules governing advertisements of Medicare supplement insurance.

(b) This rule ensures the clear and truthful disclosure of the benefits, limitations, and exclusions of policies sold as disability insurance.

(c) This is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of disability insurance in a manner that:

(1) Prevents unfair, deceptive, and misleading advertising; and

(2) Is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by insurance agents and companies.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-102. Applicability.**

(a)(1) Except for Medicare supplement insurance, this part shall apply to any "advertisement", as that term is defined herein unless otherwise specified in this part, that the insurer, hereinafter defined, knows or reasonably should know is intended for presentation, distribution, or dissemination in Arkansas when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker, or solicitor, as those terms are defined in the Arkansas Insurance Code.

(2) This part applies to all disability insurance (except for Medicare supplement insurance), including but not limited to group, blanket, and individual disability insurance.

(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 advertisements of its policies.

(2) All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised.

(c)(1) Advertising materials 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, 23-66-201.

**23 CAR § 82-103. Definitions.**

As used in this part:

(1)(A) "Advertisement" means:

(i) Printed and published material, audiovisual material, and descriptive literature of an insurer used 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, broker, or solicitor for presentation to members of the insurance-buying public, including but not limited to:

- (a) Circulars;
- (b) Leaflets;
- (c) Booklets;
- (d) Depictions;
- (e) Illustrations;
- (f) Form letters; and
- (g) Lead-generating devices of all kinds as herein defined; and

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

- (a) Agent;
- (b) Broker; or
- (c) Solicitor.

(B) The definition of "advertisement" includes:

- (i) Advertising material included with a policy when the policy is delivered; and
- (ii) Material used in the solicitation of renewals and reinstatements.

(C) The definition of "advertisement" does not include:

(i) Material to be used solely for the training and education of an insurer's:

- (a) Employees;
- (b) Agents; or
- (c) 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 disability insurance policy, which certificate has been delivered or issued for delivery in Arkansas;

(3) "Commissioner" or "Insurance Commissioner" means the Insurance Commissioner of this state as defined in Arkansas Code § 23-60-102;

(4) "Department" means the State Insurance Department as defined in Arkansas Code § 23-60-102;

(5)(A) "Disability insurance" as defined in Arkansas Code § 23-62-103 is:

(i) Insurance of human beings against:

(a) Bodily injury, disablement, or death by accident or accidental means or the expenses thereof; or

(b) Disablement or expense resulting from sickness; and

(ii) Every insurance appertaining thereto.

(B) Transaction of disability insurance does not include workers' compensation;

(6)(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;

(7) "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 disability insurance; or

(B) Promotion of the insurer as a seller of disability insurance;

(8) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, hospital service corporation, medical service corporation, prepaid health plan, and any other legal entity that is defined as an "insurer" in the Insurance Code of Arkansas and is engaged in the advertisement of itself or a disability insurance policy;

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

(10) "Invitation to inquire" means an advertisement having as its objective the creation of a desire to inquire further about disability insurance and which:

(A) Is limited to a brief description of coverage; and

(B) Shall contain a provision in the following or substantially similar form:

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

(11) "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 Arkansas for the purchase of disability insurance;

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

(13) "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;

(14)(A) "Policy" and/or "disability insurance policy" means any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement that provides disability benefits or medical, surgical, or hospital expense benefits, whether on an indemnity, reimbursement, service, or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver

of premium, and double indemnity benefits included in life insurance and annuity contracts.

(B) Disability insurance policy shall not include any Medicare supplement insurance policy; and

(15)(A) "Reduction" means any provision which reduces the amount of the benefit.

(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 and such reduction has not been used.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-104. 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 fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-105. Form and content of advertisements.**

(a)(1) The format and content of an advertisement of a disability insurance policy 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 by implication.

(2) Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(c)(1) An insurer must clearly identify its disability 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, solicitor, or other person shall solicit a resident of Arkansas for the purchase of disability insurance in connection with or as the result of the use of advertisement by such person or any other persons, where the advertisement:

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

(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, solicitor, or other person shall solicit residents of Arkansas for the purchase of disability insurance through the use of a true or fictitious name which 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, 23-66-201.

**23 CAR § 82-106. Advertisements of benefits payable, 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", "the policy will help to replace your income" (when used to express loss of time benefits), or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.

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

(B) The separate and distinct applications required need not be on a separate document or contained in a separate mailing.

(C) 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 two (2) years".

(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, and reductions of the policy offered.

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

(6) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free", "extra cash", "extra income", "extra pay", or substantially similar words or phrases because such words and phrases have the capacity, tendency, or effect of misleading the public into believing that the policy advertised will in some way enable them to make a profit from being hospitalized.

(7)(A) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement, unless such statements of such monthly or weekly benefit amounts are in juxtaposition with equally prominent statements of the benefit payable on a daily basis.

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

(C) When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

(8)(A) No advertisement of a policy covering only one (1) disease or a list of specified diseases shall imply coverage beyond the terms of the policy.

(B) Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(9)(A) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy.

(B) The statement shall be worded in language identical to or substantially similar to the following:

(i) "THIS IS A LIMITED POLICY";

(ii) "THIS IS A CANCER ONLY POLICY"; or

(iii) "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".

**(b) Exceptions, reductions, and limitations.**

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

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

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

**(c) Preexisting conditions.**

(1)(A) An advertisement which is an invitation to contract shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy.

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

(2)(A) When a disability 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, if it is an invitation to contract, 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 which 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:

(i) "Do you understand that this policy will not pay benefits during the first [insert number] year(s) after the issue date for a disease or physical condition which you now have or have had in the past? \_\_\_\_\_ YES"; or

(ii) "I understand that the policy applied for will not pay benefits for any loss incurred during the first (insert number] year(s) after the issue date on account of disease or physical condition which I now have or have had in the past."

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-107. 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, 23-66-201.

**23 CAR § 82-108. 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) A stockholder;
- (B) A director;
- (C) An officer;
- (D) An employee; or
- (E) 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.

(2) If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows, "Paid Endorsement".

(3) The requirement of this disclosure may be fulfilled by use of the phrase "Paid Endorsement" or words of similar import in a type style and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger.

(4) 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 disability insurance policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed.

(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 disability 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 benefit being advertised is not permissible.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-109. Use of statistics.**

(a)(1)(A) An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use irrelevant facts and shall not be used unless it accurately reflects all of the relevant facts.

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

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

(3)(A) An advertisement using statistics which describe an 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 the potential for misleading the public.

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

(b)(1) An advertisement shall not represent or imply that:

(A) Claim settlements by the insurer are "liberal" or "generous", or use words of similar import; or

(B) 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, 23-66-201.

**23 CAR § 82-110. Identification of plan or number of policies.**

(a) When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the:

- (1) Amount of benefits provided depends upon the plan selected; and
- (2) Premium will vary with the amount of the benefits selected.

(b) When an advertisement which is an invitation to contract refers to various benefits which may be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-111. Disparaging — Comparisons and statements.**

(a) An advertisement:

(1) Shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of noncomparable policies of other insurers;

(2) Shall not disparage competitors or their:

- (A) Policies;
- (B) Services; or
- (C) Business methods; and

(3) Shall not disparage or unfairly minimize competing methods of marketing insurance.

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

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

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

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-112. Jurisdictional licensing and status of insurer.**

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

(b) An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status, or the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of Arkansas 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 any 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:

(A) The insurer;

(B) Its policies;

- (C) Its advertising; or
- (D) Its financial condition.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-113. 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 which, without disclosing the name of the actual insurer, would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

(b) No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by agencies of the federal government or of Arkansas 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, state, or federal government.

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

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

(2) That the 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 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) Language of similar import.

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

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

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

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

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

(l) All advertisements used by agents, 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.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-114. 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 rule prohibits the solicitations 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, 23-66-201.

**23 CAR § 82-115. 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, 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 disability insurance.

(2)(A) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within Arkansas 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 inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Arkansas Insurance Code for group, blanket, or franchise insurance.

(iii) The phrase "any one (1) 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) 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.

(c) Special awards, such as a "safe drivers' award", shall not be used in connection with advertisements of disability insurance.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

**23 CAR § 82-116. Statements about an insurer.**

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

(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, 23-66-201.

**23 CAR § 82-117. 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 subject to regular and periodic 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 on 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 which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this part and the insurance laws of this state as implemented and interpreted by this part.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

### **23 CAR § 82-118. Filing for prior review.**

(a) The Insurance Commissioner may, at his or her discretion, require the filing with the State Insurance Department, for review and approval prior to use, of any disability insurance advertising material.

(b) Such advertising material must be filed by the insurer with the department not less than thirty (30) days prior to the date the insurer desires to use the advertisement.

**Authority.** Arkansas Code §§ 23-61-108, 23-66-201.

## **Appendix A. Interpretive Guidelines**

### **Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/160/23CARpt.82Appendix.pdf>