

A Refresher: Insurance Advertising Rules & Compliance

By Jerry L. Wickersham



An integral part of every insurer's regulatory compliance effort is a comprehensive review of all advertising components—to prevent misunderstandings, regulatory actions and fines — even lawsuits. Here are some specific insights and suggestions. Note that while most of these apply to life & health advertising, it is good business practice to self-impose these to property & casualty advertising materials as well.

Applicability

All advertisements, regardless of by whom written, created, designed or presented, are the responsibility of the insurer whose policies are advertised — *even if they aren't directly aware of them*. Every insurer must maintain a system of control over the content, form and method of distribution of all advertisements. It is recommended (and required by the Life & Annuity Model Rules) that producers be notified at least annually of the company's requirement that producer-generated advertising be submitted for prior approval, as well as the consequences for failing to do so.

Form and Consent of Advertisements

Advertising regulations state that an advertisement shall be "truthful and not misleading in fact or by implication." But who decides if an ad is truthful or misleading? The Commissioner of Insurance decides and it is important to consider that his/her level of scrutiny can vary depending upon the targeted market. The goal should be to explain things in a way that is clear, complete and not in any way deceitful.

Disclosure Requirements

A key point related to disclosure requirements: there is no fine print here. Insurers *must* give equal prominence to exclusions and limitations. Information that is required to be disclosed shall not be minimized, rendered obscure or presented in

an ambiguous manner, so as to be confusing or misleading. This includes information on renewability, termination rights and changes in premium.

Identity of Insurer

An insurer is required to disclose its name on all advertisements pertaining to it or its products. For life products, the insurer must disclose the policy number if a specific product is advertised. This also applies to health insurance advertisements that are considered to be an "invitation to contract".

Jurisdictional Licensing and Status of Insurer

An insurer must not give the impression of licensing in states where it is not licensed nor give the impression the company, its financial condition, or any of its forms are approved, endorsed or accredited by the insurance department or any other governmental agency.

Statements about an Insurer

Insurers must not make disparaging statements about *another* insurer or its products. They should also not make any statements — or use pictures or illustrations — that are false or misleading in fact or implication with regard to assets, liabilities, corporate structure, financial condition or products. It is also important not to use commercial ratings *unless the scope and extent* of the ratings are clearly disclosed.

Use of Statistics

If statistics are used in an advertisement, they must be recent and relevant, with sources clearly identified. While it is tempting, one should not rely solely on a specified website or the Internet in general as the source. Instead, you should seek out and disclose the actual, credible source. Also, if links to documents are used, they should be routinely tested to make sure they work.

Testimonials or Endorsement by Third Parties

The use of testimonials or third-party

endorsements must be genuine, represent the current opinion of the author and be applicable to the policy advertised. Finally, they must be accurately reproduced.

State Insurance Regulator Concerns

State insurance departments are surveying insurance advertising via the Internet. Some of the infractions found include, but are not limited to: insurers' failure to properly identify the type of insurance advertised; lack of, or inadequate, identification of current sources for statistics and citations; and the use of undefined shortened or substitute names in "invitation to inquire" or "invitation to contract" ads without first identifying the insurer's full name.

Other compliance concerns include:

- Failure to identify additional costs for endorsements/riders and, when a premium is referenced, the specific cost of referenced endorsements/riders;
- Offers of non-contractual benefits, typically considered an offer of a rebate; and
- Agents' use of unregistered assumed (DBA) names.

Insurance regulations constantly change. Insurers that seek guidance and training and include the proper departments (marketing, compliance and legal) to keep everyone up to date on the regulations themselves and industry best practices will be the ones that get, and stay, compliant. (PiMA's Advertising Manual/CD Rom, distributed to all entity Voting Members last year, will be updated later this year and is also available online.)

Jerry L. Wickersham, JD, AIRC, is VP and Senior Consultant, First Consulting & Administration Inc., an insurance regulatory consulting firm. 816-391-2743 jerry.wickersham@firstconsulting.com.