

The Impact of the “New Normal” on Advertising Compliance

During these times of uncertainty, things are changing at a rapid pace. While many agents may have previously used their skills meeting potential customers in a face to face environment, this practice no longer fits the mold of the “new normal”. As such companies and their agents are turning to Zoom and other online methods to “meet” potential customers and to market insurance products. **Does an agent’s utilization of Zoom present any potential advertising compliance issues?** Now is a perfect time to address these new marketing compliance questions and get a refresher on existing advertising compliance best practices.

Online Marketing Compliance Considerations

Now that there’s a significant shift to marketing taking place via the internet, it’s time to evaluate your compliance policies and procedures for online marketing.

- **Zoom** (and other similar platforms) – Your company may decide to use an online meeting platform for something as simple as basic introductions between customers and agents or for something as complex as application completion and enrollment. Depending on the extent in which your agents may be using an online meeting platform to market insurance products, you need to consider if each agent is properly licensed and appointed in the applicable state(s) and if your applications, including other necessary forms and disclosures, are formatted for completion online. Furthermore, if your Company has decided to allow electronic signatures, you’ll need to ensure your forms have been approved for use electronically, that all practices meet UETA and E-Sign requirements, and that you obtain an authorization from the applicant to conduct business electronically.
- **Social Media** – Social Media is more widespread than ever, and its use is growing rapidly. While it’s becoming more commonplace in day to day activities and all businesses seem to have their own “pages”, we need to remember that posts on social media can be considered advertising under insurance laws depending on the message. As such you need to make sure your agents are aware of your advertising policies and procedures, including record retention requirements.
- **Email** – Email has been around for what seems like forever, so it’s easy to forget that it can be a volatile way of conducting business given the privacy issues. If your company allows agents to use their own email systems, it may be a good time to remind them of your company’s privacy practices ensuring they aren’t breaching any rules. In addition, as with Social Media, depending on the message, an email may be considered advertising.



Know What Is Considered Advertising

In addition to the online methods of marketing, it's important to remember what is considered advertising. Based on various NAIC Model laws and regulations, an advertisement means material designed to create public interest in insurance products.

- **Printed and Published Material** – this includes audio visual material, and descriptive literature of an insurer or an insurance producer used in direct mail, newspapers, magazines, radio scripts, TV scripts, telemarketing scripts, web sites, including social media, and other internet displays or communications, other forms of electronic communications, billboards and similar displays;
- **Descriptive Literature** – including sales aids of all kinds issued by an insurer, agent, producer, broker or third parties for presentation to members of the insurance-buying public, such as circulars, leaflets, booklets, depictions, illustrations, form letters and lead-generating devices of all kinds;
- **Prepared Sales Talks and Presentations** – this includes material for use by agents, brokers, producers and solicitors whether prepared by the insurer or the agent, broker, producer or solicitor;
- **Advertising Material Incorporated with a Policy** – is included in the definition of an advertisement when the policy is delivered, as well when material is used in the solicitation of renewals and reinstatements; and
- **All Media for Communication to the General Public** – advertisements extend to the use of all media for communications to specific members of the general public, and to the use of all media for communications by agents, brokers, producers and solicitors.

System of Control - It is important to remember that insurers are required to maintain a system of control over the content, form and method advertisements are used regardless of who created and/or presented the advertisement. Thus, agents should be reminded that all advertising materials they use need to be approved by the carrier. During a market conduct exam, this is likely a key piece of information with which regulators will place focus.



Best Practice Do's and Don'ts

Here is a short list of the most important “Do’s and Don’ts” to remember about advertisements:

- **Don't Mislead** - Advertisements must be truthful, complete, and clear, and not misleading or deceptive in any way.
- **Type of Insurance** - The type of product being advertised must be clearly identified as well as the fact that it is insurance. Referencing a product by its marketing or trade name is not necessarily sufficient.
- **Carrier Name** - The full legal name of the underwriting insurance carrier must be conspicuously disclosed on all advertisements.

- **Policy Form Number** - If a specific policy is being advertised, it must be identified by the form number.
- **Assume the Public Will See It** - With more advertising being disseminated through online methods, it's important to ensure proper disclosures are included and advertisements are reviewed assuming the public will have access. Despite an ad being designed for and labeled for agent use only, it's difficult to keep these documents from leaking to the general public.
- **Crossing State Lines** - because the internet does not include boundaries and information can be seen across state lines, it's essential to clearly state where products are, or are not, available. It is also critical that agents understand they can only market to individuals located in states where they have an active insurance license and appointment where applicable.
- **Share Your Checklists and Procedures** – Make certain that your company has checklists and procedures that specifically discuss your advertising compliance expectations and then share that information with both agents and internal marketing staff. If individuals have a consistent documented process to follow, the process and the requirements will more likely become second nature which should reduce compliance risk.

Why is this so important? Market Conduct!

Although companies do not intentionally mislead in advertisements, from time to time it may inadvertently happen, or a consumer may not fully understand a product and become unhappy with the result. Unhappy customers can ultimately lead to insurance department complaints. The more complaints that are filed against a carrier, the more reasons an insurance department has to take notice and dig deeper into that carrier. Today, more than ever, insurance departments share information so although the number of complaints a carrier may have in any given state is relatively low, the overall number of complaints across all states may have an impact. Insurance departments also will not hesitate to do their own internet searches for rogue advertisements and complaints raised through other means such as the Better Business Bureau or various social media sites. Unfortunately, it is relatively easy for regulators to track down this information so being vigilant about your advertising practices is a must.

During these changing times, now more than ever this is the perfect time to remind internal staff and outside agents of the importance of advertising requirements to ensure your marketing efforts keep heading in the right direction and your compliance standards continue to be met at the highest level possible.

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Anita has over 25 years of life and health insurance compliance experience including product drafting and development, form filings, fraud review, TPA auditing and oversight, regulatory research, agent appointments, advertising review and market conduct exams.