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REGULATORY BULLETIN 2001-9

TO: Health Insurers, Health Insurance Producers and Health Underwriters

FROM: Charles R. Cohen
Director of Insurance

DATE: July 20, 2001

RE: **Health Insurance Mass Facsimile Advertising**

The Department has noted a significant number of recent violations of Arizona law in the advertising of health insurance. Truthful advertising is a vital component in protecting the insurance consumer, and the responsibility to disseminate complete and accurate information must be taken seriously. The purpose of this bulletin is to remind **all** producers of some of the legal requirements for insurance advertising.

The recent scenario for advertising violations is where an insurance producer, utilizing a "Blast Fax" service or mass mailing, fails to accurately or completely disclose certain items in the advertising as required by Arizona Revised Statutes, Title 20, and the Arizona Administrative Code. Misrepresentation and false advertising of policies is a violation of A.R.S. §20-443 and, in certain cases, deceptive advertising may constitute an unfair trade practice within the meaning of A.R.S. §20-442. Health insurance advertisements are specifically governed by A.A.C. R20-6-201. Other types of insurance are also subject to specific requirements, such as long-term care insurance (A.A.C. R20-6-1013) and Medicare supplement insurance (A.A.C. R20-6-1116). Violations of these laws can result in cease and desist orders, civil penalties and action against a producer's license.

In general, advertisements must be truthful and not misleading in fact or implication. The two most commonly seen violations are 1) failure to identify the insurer in the advertisement; and 2) failure to disclose exceptions, reductions and limitations affecting the provisions of the policy.

In the first violation scenario, advertisements frequently fail to identify any insurer or they identify multiple insurers to which all of the advertised benefits do not apply. A.A.C. R20-6-201(L) requires that the identity of the insurer be made clear in all advertisements. In the multiple insurer scenario, if not all of the products or benefits described in the advertisement are available from all the insurers a producer represents, the result is a misleading or deceptive advertisement. Even where only one insurer's product is described in the advertisement, the insurer must still be named and cannot be referred to in vague terms such as "All plans issued by an A-rated company." Although it is not a legal requirement, it would be beneficial to the consumer if the producer is identified by name. Typically, only a phone number is provided in the advertisement with no name of the producer or agency.

In the second violation scenario, certain features of a policy are highlighted in the advertisements without disclosing exceptions, reductions and limitations affecting the policy. While it is a natural inclination to tout the most compelling features of a policy, that does not always tell the whole story. Examples of this include making broad representations as to the benefits and insurers such as "best deals, "lower cost – Save 30% or more off your current premium!" "Lab Test: co-pay," "Prescription Card: included," and "Chiropractic Care: covered." Advertisements for insurance are not the same as advertisements for home appliances or mattresses. The rule explicitly requires that the particulars must be disclosed so that the consumer has complete and detailed information upon which to make a decision. Even if these statements are, in fact, truthful statements, an advertisement with this information and nothing more violates the law. In order for the advertisement to comply with A.A.C. R20-6-201(C)(2), when 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, the advertisement shall also disclose the exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the tendency to mislead.

Finally, where a mass facsimile, or "Blast Fax" is used, producers should be aware of the federal Telephone Consumer Protection Act, the popular name for a variety of federal laws enacted to address telephone and facsimile solicitations. 47 U.S.C. §227(b)(1)(C) provides that it shall be unlawful for any person within the United States to use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

Advertising is a powerful and effective way to reach consumers. Thus, the information contained in that advertising must be complete and accurate. Insurance producers should make the effort to refresh their knowledge of the statutes and rules regarding advertisements as the examples set forth above are just a few of the requirements for insurance advertising.

Insurers are encouraged to disseminate this bulletin to their affiliated producers.