

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1035

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-31-84
DATE FOR REVIEW 6-8-84
DATE DUE 6-14-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 6-14-84 (CDS) Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 6-15-84 Revisor approved 6/1/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.30.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 9.5.83

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency no small biz statement. but see Sup. SONR

✓ Affidavits of Mailing Notice or rulemaking
12.28.83 At least 30 days prior to ~~hearing~~/adoption
1.9.84 with correct copy of rules.

✓ Mailing list Certificate

✓ Publication in State Register
1.2.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
Supplement to SONR - contains statement re small biz.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General
misstates AG Review period

? Compliance w/ Ch. 188

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MICHAEL A. HATCH
Commissioner of Commerce

DATE: 6/14/84

Attn: THOMAS F. PURSELL/Special Assist. Att. General

FROM : LARRY D. STARNS
Special Assistant
Attorney General LDS

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Marketing Standards/

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS: sa

AG copy

Department of Commerce

Adopted Rules Relating to Insurance Marketing Standards

Rules as Adopted

4 MCAR S 1.9420 Scope and authority.

4 MCAR SS 1.9420-~~1.9442~~ 1.9441 are adopted pursuant to Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9421 Applicability.

4 MCAR SS 1.9420-~~1.9442~~ 1.9441 apply to any insurance advertisement or representation, written or oral, as defined in these rules, which is intended for presentation, distribution, or dissemination in the state of Minnesota, directly or indirectly, by or on behalf of any insurer or agent.

Rules 4 MCAR SS 1.9420-~~1.9442~~ 1.9441 are not all inclusive. The fact that a practice is not specifically prohibited in these rules does not imply acceptance of the practice. These rules are to be construed in a manner so as to carry out the stated and implied purpose of Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9422 Construction.

A. Advertising or representations. Whether an advertisement or representation, written or oral, has a capacity or tendency to mislead or deceive is determined by the commissioner of commerce from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, unique to the particular type of audience to which the advertisement is directed, and whether it may be reasonably comprehended by the segment of the public to which it is directed.

B. Department policy. The policy of the department of commerce, in interpreting the meaning of 4 MCAR SS 1.9420-~~1.9442~~ 1.9441 when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose, and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or

whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

C. Method of disclosure of required information. All information required to be disclosed by 4 MCAR SS 1.9420-~~1.9442~~ 1.9441 must be set out clearly, conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it is readily noticed and not minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the contents of the advertisement or representation, whether written or oral, so as to be confusing or misleading.

D. Advertisements. Advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

4 MCAR S 1.9423 Definitions.

For the purposes of 4 MCAR SS 1.9420-~~1.9442~~ 1.9441 the terms in A.-I. have the meanings given them.

A. Advertisement. "Advertisement" includes:

1. printed and published material, audio visual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

2. descriptive literature and sales ads of all kinds issued by an insurer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. prepared sales talks, presentations, and material for use by agents and representations made by agents in accordance with these talks, presentations, and materials;

4. statements, written or oral, by an agent.

B. Agent, agents, or agencies. "Agent," "agents," or "agencies" includes insurance agents and agencies licensed pursuant to Minnesota Statutes, section 60A.17, insurance agencies, and designated representatives of these agents or agencies.

C. Exception. "Exception" includes any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

D. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyd's, fraternal benefits society, self-insurer, surplus line insurer, pooled or joint self-insurance group, or self-insurance administrator, nonprofit service plan, and any other legal entity engaged in the advertisement of a policy. An insurer includes an affiliate of a group of insurers under common management and control.

E. Limitation. "Limitation" means any provision which restricts coverage under the policy other than an exception or a reduction.

F. Policy. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement, binder, or other evidence of coverage which provides insurance or self-insurance, whether on an indemnity, reimbursement, service, or prepaid basis. "Policy" includes any subscriber contract issuing coverage under a self-insurance plan, annuity, group self-insurance, or pooled or joint self-insurance employee plan.

G. Reduction. "Reduction" includes any provision which reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction not been used.

H. Self-insurer. "Self-insurer" includes any entity authorized pursuant to Minnesota Statutes, sections 65B.48 and 176.181, Minnesota Statutes, chapter 62H, Laws of Minnesota

1983, chapter 290, section 171, or Minnesota Statutes, section 471.981 and includes any entity which, for compensation employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota Statutes, section 60A.23, subdivision 8.

I. Similar policies. "Similar policies" include policies which provide similar benefits even though there may be differences in benefit amounts, elimination periods, renewal terms, or ancillary benefits.

~~4 MCAR S 1.9424 Suitability of policies.~~

~~In recommending the purchase of any life, endowment, annuity, life endowment, or medical supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to: the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.~~

4 MCAR S ~~1.9425~~ 1.9424 Deceptive words, phrases, or illustrations.

A. General prohibition. No advertisement or representation, written or oral, may omit information or use words, phrases, statements, references, or illustrations if the omission of the information or use of the 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 policy benefit payable, loss covered, or premium payable. 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.

B. Coverage terms. No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income," when used to express loss of time benefits or similar words and phrases, in a deceptive or misleading manner so as to exaggerate any benefits beyond the terms of the policy.

C. Statements regarding tax benefits. An advertisement must not state a policy's benefits are tax free unless an explanation of the rules applicable to the taxation of these types of policy benefits are clearly shown with equal prominence and in close conjunction with the statement. An advertisement of a benefit for which payment is conditioned upon confinement in a hospital or similar facility must not state that the benefit is tax free.

D. Benefit terms. An advertisement may not use the expressions "extra cash," "cash income," "income," "cash," or similar words or phrases in such a way as to imply that the insured will receive benefits in excess of the expenses incurred while being sick, injured, or hospitalized.

E. Payment terms. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium, or use other similar language.

F. Dividends. Dividends are a return of premium and it is misleading and deceptive to refer to them as being tax free, or to use words of similar import, unless they are used within an instructive context and the nature of dividend as a return of premium is clearly indicated.

G. Dread disease policies. A policy covering only one

disease or a list of specified diseases must not be advertised so as to imply coverage beyond the terms of the policy. A particular disease shall not be referred to in more than one term so as to imply broader coverage than is the fact.

H. Policy limitations. The benefits of a policy which pays varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, must not be advertised without disclosing the limitations or reductions under which the benefits referred to are provided by the policy.

I. Maximum benefits. The maximum benefit available under a policy must not be emphasized in a manner which exaggerates its relationship to any internal limits or other conditions of the policy. Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

J. Aggregate benefits. The aggregate amounts or the monthly or weekly benefits payable under coverage such as hospital or similar facility confinement indemnity or private duty nursing must not be emphasized unless the actual amounts payable per day are disclosed with substantially equal prominence and in close conjunction with the statement. Any limitation or reduction in the policy and the number of days of coverage provided must be disclosed.

K. False statements regarding coverage. An advertisement must not state or imply that each member under a family policy is covered as to the maximum benefits advertised when such is not the case.

L. Exaggeration of certain diseases. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

M. Benefit examples. Examples of what benefits may be paid under a policy must be shown only for losses from common illnesses or injuries rather than exceptional or rare illnesses

or injuries.

N. Benefit clarification. When a range of hospital room expense benefits is set forth in an advertisement, it must be made clear that the insured will receive only the benefit indicated in the policy purchased. It must not be implied that the insured may select his room expense benefit at the time of hospitalization.

O. Benefit increases at time of disability. An advertisement must not imply that the amount of benefits payable under a loss of time policy may be increased at time of disability according to the needs of the insured.

P. Misleading payment claims. An advertisement must not state that the insurer "pays hospital, surgical, medical bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "guarantees your paycheck," "guarantees your income," "continues your income," "provides a guaranteed paycheck," "provides a guaranteed income," or "fills the gaps in medicare," or use similar words or phrases unless the statement is literally true.

Q. Premium levels. An advertisement shall not state that premiums will not be changed in the future unless such is the fact.

R. Deductibles. An advertisement which states dollar amounts of benefits payable and premiums must clearly indicate the provisions of any deductible under a policy.

S. Other insurance. If a policy contains any of the following or similar provisions, an advertisement referring to the policy must not state that benefits are payable in addition to other insurance unless the statement contains an appropriate reference to the coverage excepted:

1. an "other insurance" exception, reduction, limitation, or deductible;

2. a "coordination of benefits" or "nonduplication" provision;

3. an "other insurance in this company" provision;

4. an "insurance in another insurer's" provision;

5. a "relation of earnings to insurance" provision;

6. a workers' compensation, employer's liability, occupational disease law, or automobile no-fault exception, reduction, or limitation;

7. a reduction based on social security benefits or other disability benefits; or

8. a medicare exception, reduction, or limitation.

T. Immediate coverage or guaranteed issuance. An advertisement may refer to immediate coverage or guaranteed issuance of a policy only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

U. Premium increases or premium reductions. If an advertisement indicates an initial premium which differs from the renewal premium on the same mode, the renewal premium shall be disclosed with equal prominence and in close conjunction with any statement of the initial premium. Any increase in premium or reduction in coverage because of age shall be clearly disclosed.

V. Pre-existing conditions. An advertisement must not state that the policy contains no waiting period unless pre-existing conditions are covered immediately or unless the effect of pre-existing conditions is disclosed with equal prominence and in close conjunction with the statement.

W. Age limits. An advertisement must not state that no age limit applies to an insured or applicant unless application from applicants of any age are considered in good faith, and the statement clearly indicates the date or age to which the policy may be renewed or that the company may refuse renewal.

X. Health provisions. An advertisement shall not state that no medical, doctor's, or physical examination is required or that no health, medical, or doctor's statements or questions are required or that the examination, statements, or questions are waived or otherwise state or imply that the applicant's physical

condition or medical history will not affect the policy unless:

1. the statement indicates with equal prominence that it applies only to the issuance of the policy or to both the issuance of the policy and the payment of claims; and

2. pre-existing conditions are covered immediately under the policy or the period of time following the effective date of the policy during which pre-existing conditions are not covered is disclosed with equal prominence and in close conjunction with the statement.

Y. Limited accident and health policies. An advertisement of a limited accident and health policy must prominently indicate that the policy provides limited coverage with an appropriate statement such as "this is a cancer only policy" or "this is an automobile accident only policy," "this is an accident policy only--this policy does not allow coverage for sickness," "this policy provides dental insurance only."

Z. Exceptions, reductions, or limitations. An advertisement must not set out exceptions, reductions, or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions, or limitations shall fairly and accurately describe their negative features. The words "only," "minimum," "just," "merely," or similar words or phrases must not be used to refer to exceptions, reductions, or limitations.

AA. Misleading cost statements. An advertisement must not state or imply, or use similar words or phrases to the effect that because no insurance agent will call and no commissions will be paid to agents, the policy is a low cost plan, unless literally true.

BB. Awards. Devices such as a safe driver's award and other such awards must not be used in connection with an advertisement, except advertisements for property and casualty insurance.

CC. Applications. An advertisement must not use an application which is deceptively similar to paper currency,

bonds, or stock certificates.

DD. Mandated benefits. An advertisement must not exaggerate the effect of statutorily mandated benefits or required policy provisions or imply that these provisions are unique to the advertised policy.

EE. Statements of coverage. An advertisement must state clearly the insurance coverage being offered.

FF. Medicare supplement policies. An advertisement which refers to a policy as being a "medicare supplement" policy must, in addition to the other disclosure requirements required by law, comply with the following requirements:

1. contain a prominent statement indicating which medicare benefits the policy is intended to supplement, for example, hospital benefits; and which medicare benefits the policy will not supplement, for example, nursing home benefits; and must clearly disclose any gaps in medicare coverage for which the policy does not provide benefits;

2. clearly indicate the extent and amount of the benefits if the policy benefits are on an expenses-incurred basis beyond what medicare covers;

3. clearly indicate the classification of the medicare supplement coverage being offered by the policy as defined by Minnesota Statutes, sections 62A.31, 62A.32, 62A.33, 62A.34, and 62A.35;

4. must not imply or state that the policy is in any manner related to the federal medicare program or any other governmental program.

GG. Federal program information. An advertisement which offers to provide information concerning the federal medicare program or any related government program or changes in the program must:

1. include no reference to the program on the envelope, the reply envelope, or on the address side of the reply postal card, if any;

2. include on any page containing a reference to the program an equally prominent statement to the effect that in

providing supplemental coverage the insurer and agent involved in the solicitation are not in any manner connected with the program;

3. contain a statement that it is an advertisement for insurance or is intended to obtain insurance prospects;

4. prominently identify the insurer or insurers which will issue the coverage; and

5. prominently state that any material or information offered will be delivered in person by a representative of the insurer, if that is the case.

4 MCAR S ~~1.9426~~ 1.9425 Exceptions, reductions, and limitations.

A. Disclosure. When an advertisement for health or accident insurance refers to any dollar amount of benefits payable, period of time for which any benefit is payable, cost of a policy, specific policy benefit, or the loss for which the benefit is payable, it must also disclose those exceptions, reductions, and limitations, including waiting, elimination, probationary, or similar periods, and pre-existing condition exceptions, affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

B. Pre-existing conditions summary. If the policy advertised does not provide immediate coverage for pre-existing conditions, an application or enrollment form contained in or included with an advertisement to be completed by the applicant and returned to the insurer must contain a question or statement immediately preceding the applicant's signature line which summarizes the pre-existing condition provisions of the policy.

C. Pre-existing conditions disclosure. An advertisement must in negative terms disclose the extent to which any loss is not covered if the cause of the loss is a condition which exists prior to the effective date of the policy. The expression "pre-existing conditions" shall not be used unless appropriately defined.

D. Medical exam disclosure. If a medical examination is

required for a policy, an advertisement for that policy must disclose this requirement.

4 MCAR S ~~1.9427~~ 1.9426 Renewability, cancelability, and termination.

An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, must disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which would not have the capacity or tendency to mislead, deceive, minimize, or render obscure the qualifying conditions. An advertisement of a group or blanket policy which would otherwise be subject to the disclosure requirements of this rule need not disclose the policy's provisions relating to renewability, cancelability, and termination. The advertisement must provide, however, as a minimum, that an insured's coverage is contingent upon his or her continued membership in the group and the continuation of the plan.

4 MCAR S ~~1.9428~~ 1.9427 Identity.

A. Disclosure. The identity of the insurer, agents, or agency must be made clear in all advertisements or representations, whether written or oral.

B. Names. An advertisement or representation, whether written or oral, must not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol, or any other device which has the capacity or tendency to mislead or deceive as to the identify of the insurer, agents, or agency.

C. Connection with a government agency. An advertisement or representation, whether written or oral, must not use any combination of words, symbols, or materials which, by its

content, phraseology, shape, color, nature, or other characteristics, is so similar to combinations of words, symbols, or materials used by federal, state, or local government agencies that it tends to confuse or mislead prospective buyers into believing that the solicitation is in some manner connected with the government agency.

4 MCAR S ~~1.9429~~ 1.9428 Testimonials, endorsements, or commendations by third parties.

A. Disclosure of interests. If a person, group, or association making a testimonial, endorsement, or a commendatory statement concerning the insurer has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, the facts must be disclosed in the advertisement or representation, whether written or oral. If the person, organization, or association is compensated for making a testimonial, endorsement, or commendatory statement, the facts must be disclosed in the advertisement or representation, whether written or oral, by language fully disclosing that compensation was paid. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for the "scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment," for filming or recording of television or radio advertisements remove the filming and recording from the category of an unsolicited testimonial and require disclosure of the compensation.

B. Approvals or endorsements. An advertisement or representation, whether written or oral, must not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless that is the fact, and only if any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or by a person or persons who are in

control of the insurer, the facts must be disclosed in the advertisement.

C. Genuineness. A testimonial, endorsement, or commendatory statement used in an advertisement or representation, whether written or oral, must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.

D. General restrictions. An insurer, agent, or agency shall not use a testimonial, endorsement, or commendatory statement in any advertisement or representation, whether written or oral:

1. which is fictional;

2. where the insurer, agent, or agency has some information indicating a substantial change of view on the part of the author;

3. where more than two years have elapsed from the date of the testimonial or the last confirmation of the statement without obtaining a confirmation that the statement represents the author's current opinion;

4. which does not accurately reflect the present practice of the insurer, agent, or agency;

5. which refers to a policy other than the one for which such statement was given, unless the statement clearly has some reasonable application to the other policy;

6. in which a change or omission has been effected which alters or distorts its meaning or intent as originally written; or

7. if it contains a description of benefit payments which does not disclose the true nature of the insurance coverage under which the benefits were paid.

4 MCAR S ~~1.9430~~ 1.9429 Jurisdictional licensing.

A. Misrepresentation. An advertisement which may be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed must not imply licensing beyond those limits.

B. Disclosure. Advertisements by direct mail insurers must indicate that the insurer is licensed in a specified state or states, or is not licensed in a specified state or states, by

use of some language such as "This company is licensed in state A" or "This company is not licensed in state B."

4 MCAR S ~~1.9431~~ 1.9430 Approval by government agency.

A. Misleading advertisements. An advertisement or representation, whether written or oral, must not state or imply, or otherwise create the impression directly or indirectly, that the insurer, its financial condition or status, the payment of its claims, its policy forms or the merits or desirability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any agency of this state or the federal government, unless that is the fact.

B. Licensing as endorsement disclaimed. In any advertisement or representation, whether written or oral, any reference to licensing must contain an appropriate disclaimer that the reference is not to be construed as an endorsement or implied endorsement of the insurer, agent, or agencies by the Department of Commerce or any other agency of this state.

C. Reproduction of report of examination prohibited. No advertisement or representation, whether written or oral, may reproduce any portion of a Department of Commerce report of examination.

4 MCAR S ~~1.9432~~ 1.9431 Introductory, initial, or special offers in limited enrollment periods.

A. Regulation. An advertisement or representation, whether written or oral, must not state or imply that a policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages not available at a later date by accepting the offer, that only a limited number of policies will be sold, that a time is fixed for the discontinuance of the sale of the policy advertised because of special advantages available in the policies, or that an applicant will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless that is fact.

B. Disclosure of enrollment period. A written advertisement

shall not state or imply that enrollment under a policy is limited to a specific period unless the period of time permitted to enroll is disclosed.

C. Disclosure of similar offers. If the insurer making a special offer has previously offered the same or similar policy on the same basis or intends to repeat the current offer for the same or similar policy, the advertisement or representation, whether written or oral, must so indicate.

D. Limits of timing of enrollment periods. An insurer must not establish for residents of this state a limited enrollment period within which an individual policy or certificate may be purchased less than six months after the close of an earlier limited enrollment period for the same or similar policy or certificate. This restriction also applies to all advertisements or representations, whether written or oral, soliciting enrollment under mass marketed or direct response solicitations for life or health insurance coverage.

4 MCAR S ~~1.9433~~ 1.9432 Group, quasi-group, or special class implications.

An advertisement or representation, whether written or oral, must not state or imply that prospective policyholders or members of a particular class of individuals become group or quasi-group members or are uniquely eligible for a special policy or coverage and as such will be subject to special rates or underwriting privileges or that a particular coverage or policy is exclusively for preferred risk, a particular segment of people, or a particular age group or groups, unless that is the fact.

4 MCAR S ~~1.9434~~ 1.9433 Identification of plan or numbers of policies.

A. Benefits to depend on plan selected. When an advertisement or representation, whether written or oral, refers to a choice regarding benefit amounts, it must disclose that the benefit amounts provided will depend upon the plan selected and that the premium will vary with the amount of the benefits.

B. Benefits requiring combination of policies. When an advertisement refers to various benefits which may be contained in two or more policies, other than group policies, it must disclose that the benefits are provided only through a combination of the policies.

4 MCAR S ~~1.9435~~ 1.9434 Use of statistics.

A. Relevant facts. An advertisement or representation, whether written or oral, relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. Irrelevant statistical data shall not be used. The sources of all statistical information must be disclosed in the advertisement or representation.

B. Applicable statistics. An advertisement or representation, whether written or oral, must not imply that any statistics used are derived from the policy advertised unless those statistics are derived from the policy.

4 MCAR S ~~1.9436~~ 1.9435 Inspection of the policy.

A. Effect. An offer in an advertisement or representation, whether written or oral, of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in the advertisement or representation.

B. Return disclosure. An advertisement or representation, whether written or oral, which refers to the provision in the policy advertised or represented regarding the right to return the policy must disclose the time limitation applicable to this right.

4 MCAR S ~~1.9437~~ 1.9436 Disparaging comparisons and statements.

An advertisement must not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparage, discredit, or criticize competitors, their policies, services, or business methods or competing marketing methods.

4 MCAR S ~~1.9438~~ 1.9437 Statement about an insurer.

An advertisement must not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, experience, or relative position in the insurance business.

4 MCAR S ~~1.9439~~ 1.9438 Service facilities.

An advertisement or representation, whether written or oral, must not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy, or contain a description of a claim which involves unique or highly unusual circumstances.

4 MCAR S ~~1.9440~~ 1.9439 Insurer's advertising file.

A. Retention of copies. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, or group policies hereafter disseminated in this or any other state whether or not licensed in the other state. A notation must be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any policy, amendment, rider, or endorsement form advertised. The company must be able to identify and provide a copy of the policy advertised, together with any amendment, rider, or endorsement applicable thereto. All advertisements must be maintained for a period of not less than three years. The file is subject to regular and periodic inspection by the Department of Commerce.

B. Affidavit with annual statement. Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of 4 MCAR SS 1.9420-~~1.9442~~ 1.9441 must file with the Department of Commerce together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of their knowledge, information, and belief, that the

his or her

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 the insurance laws of this state as implemented and interpreted by these rules.

4 MCAR S ~~1.9441~~ 1.9440 Responsibility of insurer, agent, or agency.

A. System of control required. Every insurer, agent, or agency shall establish and at all times maintain a system of control over the content, form, and method of advertisements and representations, oral and written, concerning its policies. All advertisements and representations, whether written or oral, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised or represented.

B. Prior approval by insurer. An insurer shall require its agents or agencies and any other person or agency preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

4 MCAR S ~~1.9442~~ 1.9441 Penalty.

Violations of 4 MCAR SS 1.9420-~~1.9441~~ 1.9440 subject the violator to the penalties described in Minnesota Statutes, chapters 60A and 62A.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 15 1984
Joan Anderson Growe
Secretary of State
2:20PM

APPROVED AS TO LEGALITY
June 14, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Trade Conduct -
Marketing Standards

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 2, 1984 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minn. Stat. § 14.14, subd. 1a, on December 28, 1983.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven (7) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 4 MCAR §§ 1.9420 - 1.9441 are adopted this 30th day of May, 1984 pursuant to authority vested in me by Minn. Stat. §§ 60A and 72A.

Michael A. Hatch
Commissioner of Commerce

Stripped Proposed
SF-00006-02

STATE OF MINNESOTA

DEPARTMENT REVISOR OF STATUTES

Office Memorandum

TO : Deb Lindlief
Department of Commerce

DATE: 1-5-83

FROM : Corrine Staeheli
Rules Supervisor

PHONE: 297-2955

SUBJECT: Proposed Rules, stripped copy

Enclosed is a stripped copy of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

Please use this copy to indicate any modifications you wish to make. Our office would be happy to input the changes on our computer, and turn out copies for you to submit for final approval to our office and the Attorney General.

If your proposed rules are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval.

Your rules were published on January 2, 1984, at 8 S.R. 1568, pages 1568 through 1576.

CRS/kh
Enclosure
AR0 455

Religious and Civil Rights to withhold public funding from artists and arts organizations whose work is considered defamatory to religious and ethnic minorities.

The meeting will be held on Monday, September 12, from 7:00 to 9:30 p.m., at the State Office Building Auditorium, St. Paul.

Speakers will be asked to limit their comments to five minutes in length. Nevertheless, because of time limitations, not all who wish to comment may be heard. For that reason, all written comments received by the Arts Board on that day, or before 4:30 p.m. September 13, will become part of the official record. That record will be considered by Arts Board members prior to their final decision on the request at their regular meeting on September 23.

Written testimony may be brought to the meeting, or delivered to the Minnesota State Arts Board office at 432 Summit Avenue, St. Paul, Minnesota 55102.

Minnesota State Board of Chiropractic Examiners

Announcement of Advertising Meeting

TO:	All Interested Persons
FROM:	The Minnesota Board of Chiropractic Examiners
SUBJECT:	Advertising Meeting
DATE:	September 13, 1983
TIME:	2:00 P.M.
PLACE:	Minnesota Department of Health Building, Room 105 717 S.E. Delaware Street, Minneapolis, Minnesota 55414

The board has received newspaper clippings and other forms of advertisement by Minnesota chiropractors. Some of the advertising is in violation of the statutes and rules; consequently, the violators have been and continue to be disciplined by the board.

There is a necessity for the board to consider changes in its present rules concerning advertising. With this thought in mind, the board members invite you to the informal open meeting as defined above. The board would appreciate your valued input and further consider same in its proposed rule changes on advertising.

In the event you are unable to attend and would like to express your views, please send your response in writing prior to September 10th, to the above address.

Thank you for your cooperation.

Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Unfair Trade Practices—Marketing Standards in Regard to Insurance

Notice is hereby given that the Policy Analysis Division of the Department of Commerce is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing unfair trade conduct in regard to marketing of insurance in the State of Minnesota. The promulgation of these rules is authorized by Minnesota Statute §§ 72A.20 and 60A.17.

The Policy Analysis Division of the Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comments orally. Written statements should be addressed to:

Richard G. Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-5689 and in person at the above address.

All statements of information and comment shall be accepted until the close of the business day on September 30, 1983. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT of Commerce

TO : CAROL PORTER
State Register

DATE: August 19, 1983

FROM : RICHARD G. GOMSRUD
Staff Attorney

PHONE: 6-5689

SUBJECT: Notice of intent to solicit opinion

Enclosed please find our Notice of Intent to Solicit Outside Opinion concerning new insurance rules pertaining to market conduct. I would appreciate it if the same could be posted at the earliest possible time.

Also enclosed please find form SR-0000-01 and three copies of the notice to solicit. If there are any problems in regard to this please advise me accordingly.

rh

Enclosures

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT of Commerce

TO : STATE REGISTER AND PUBLIC DOCUMENTS DIV. DATE: August 19, 1983

FROM : RICHARD G. GOMSRUD
Staff Attorney PHONE: 6-5689

SUBJECT: Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Unfair Trade Practices - Marketing Standards in Regard to Insurance

Notice is hereby given that the Policy Analysis Division of the Department of Commerce is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing unfair trade conduct in regard to marketing of insurance in the State of Minnesota. The promulgation of these rules is authorized by Minnesota Statute § 72A.20 and § 60A.17.

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rh

STATE OF MINNESOTA – DEPARTMENT OF ADMINISTRATION

THE OFFICE OF THE **State Register**

Hamm Building, 408 St. Peter St., Suite 415
St. Paul, MN 55102 (612) 296-8239

INSTRUCTIONS:
1. Use typewriter only, so that all carbon copies are legible.
2. Use a separate form for each type of request and/or each sequence used.
3. Complete only the **shaded** blocks.
4. Your agency's STATE REGISTER liaison officer must sign this form.
5. Retain the last copy for your records.

CHECK ONE ONLY:

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Department Commerce		Division Regulatory Evaluation ~~Policy and Rate~~		Address 500 Metro Sq. Bldg. – St. Paul, Mn 55101						
Dept. Authorized Signature – Liaison Officer Tammy Wetterling			Date	Transaction Number (For A68 Only)						

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Marketing Standards

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 19th day of December, 1983 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Marketing Standards

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, chapters 60A and 72A. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

4 MCAR S 1.9420 Scope and authority.

4 MCAR SS 1.9420-1.9442 are adopted pursuant to Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9421 Applicability.

4 MCAR SS 1.9420-1.9442 apply to any insurance advertisement or representation, written or oral, as defined in these rules, which is intended for presentation, distribution, or dissemination in the state of Minnesota, directly or indirectly, by or on behalf of any insurer or agent.

Rules 4 MCAR SS 1.9420-1.9442 are not all inclusive. The fact that a practice is not specifically prohibited in these rules does not imply acceptance of the practice. These rules are to be construed in a manner so as to carry out the stated and implied purpose of Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9422 Construction.

A. Advertising or representations. Whether an advertisement or representation, written or oral, has a capacity or tendency to mislead or deceive is determined by the commissioner of commerce from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, unique to the particular type of audience to which the advertisement is directed, and whether it may be reasonably comprehended by the segment of the public to which it is directed.

B. Department policy. The policy of the department of commerce, in interpreting the meaning of 4 MCAR SS 1.9420-1.9442 when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose, and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

C. Method of disclosure of required information. All

information required to be disclosed by 4 MCAR SS 1.9420-1.9442 must be set out clearly, conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it is readily noticed and not minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the contents of the advertisement or representation, whether written or oral, so as to be confusing or misleading.

D. Advertisements. Advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

4 MCAR S 1.9423 Definitions.

For the purposes of 4 MCAR SS 1.9420-1.9442 the terms in A.-I. have the meanings given them.

A. Advertisement. "Advertisement" includes:

1. printed and published material, audio visual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

2. descriptive literature and sales ads of all kinds issued by an insurer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. prepared sales talks, presentations, and material for use by agents and representations made by agents in accordance with these talks, presentations, and materials;

4. statements, written or oral, by an agent.

B. Agent, agents, or agencies. "Agent," "agents," or "agencies" includes insurance agents and agencies licensed pursuant to Minnesota Statutes, section 60A.17, insurance agencies, and designated representatives of these agents or

agencies.

C. Exception. "Exception" includes any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

D. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyd's, fraternal benefits society, self-insurer, surplus line insurer, pooled or joint self-insurance group, or self-insurance administrator, nonprofit service plan, and any other legal entity engaged in the advertisement of a policy. An insurer includes an affiliate of a group of insurers under common management and control.

E. Limitation. "Limitation" means any provision which restricts coverage under the policy other than an exception or a reduction.

F. Policy. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement, binder, or other evidence of coverage which provides insurance or self-insurance, whether on an indemnity, reimbursement, service, or prepaid basis. "Policy" includes any subscriber contract issuing coverage under a self-insurance plan, annuity, group self-insurance, or pooled or joint self-insurance employee plan.

G. Reduction. "Reduction" includes any provision which reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction not been used.

H. Self-insurer. "Self-insurer" includes any entity authorized pursuant to Minnesota Statutes, sections 65B.48 and 176.181, Minnesota Statutes, chapter 62H, Laws of Minnesota 1983, chapter 290, section 171, or Minnesota Statutes, section 471.981 and includes any entity which, for compensation employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota

Statutes, section 60A.23, subdivision 8.

I. Similar policies. "Similar policies" include policies which provide similar benefits even though there may be differences in benefit amounts, elimination periods, renewal terms, or ancillary benefits.

4 MCAR S 1.9424 Suitability of policies.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to: the customer's income; the customer's need for insurance; and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR S 1.9425 Deceptive words, phrases, or illustrations.

A. General prohibition. No advertisement or representation, written or oral, may omit information or use words, phrases, statements, references, or illustrations if the omission of the information or use of the 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 policy benefit payable, loss covered, or premium payable. 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.

B. Coverage terms. No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this

policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income," when used to express loss time benefits or similar words and phrases, in a deceptive or misleading manner so as to exaggerate any benefits beyond the terms of the policy.

C. Statements regarding tax benefits. An advertisement must not state a policy's benefits are tax free unless an explanation of the rules applicable to the taxation of these types of policy benefits are clearly shown with equal prominence and in close conjunction with the statement. An advertisement of a benefit for which payment is conditioned upon confinement in a hospital or similar facility must not state that the benefit is tax free.

D. Benefit terms. An advertisement may not use the expressions "extra cash," "cash income," "income," "cash," or similar words or phrases in such a way as to imply that the insured will receive benefits in excess of the expenses incurred while being sick, injured, or hospitalized.

E. Payment terms. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium, or use other similar language.

F. Dividends. Dividends are a return of premium and it is misleading and deceptive to refer to them as being tax free, or to use words of similar import, unless they are used within an instructive context and the nature of dividend as a return of premium is clearly indicated.

G. Dread disease policies. A policy covering only one disease or a list of specified diseases must not be advertised so as to imply coverage beyond the terms of the policy. A particular disease shall not be referred to in more than one term so as to imply broader coverage than is the fact.

H. Policy limitations. The benefits of a policy which pays

varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, must not be advertised without disclosing the limitations or reductions under which the benefits referred to are provided by the policy.

I. Maximum benefits. The maximum benefit available under a policy must not be emphasized in a manner which exaggerates its relationship to any internal limits or other conditions of the policy. Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

J. Aggregate benefits. The aggregate amounts or the monthly or weekly benefits payable under coverage such as hospital or similar facility confinement indemnity or private duty nursing must not be emphasized unless the actual amounts payable per day are disclosed with substantially equal prominence and in close conjunction with the statement. Any limitation or reduction in the policy and the number of days of coverage provided must be disclosed.

K. False statements regarding coverage. An advertisement must not state or imply that each member under a family policy is covered as to the maximum benefits advertised when such is not the case.

L. Exaggeration of certain diseases. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

M. Benefit examples. Examples of what benefits may be paid under a policy must be shown only for losses from common illnesses or injuries rather than exceptional or rare illnesses or injuries.

N. Benefit clarification. When a range of hospital room expense benefits is set forth in an advertisement, it must be made clear that the insured will receive only the benefit indicated in the policy purchased. It must not be implied that

the insured may select his room expense benefit at the time of hospitalization.

O. Benefit increases at time of disability. An advertisement must not imply that the amount of benefits payable under a loss of time policy may be increased at time of disability according to the needs of the insured.

P. Misleading payment claims. An advertisement must not state that the insurer "pays hospital, surgical, medical bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "guarantees your paycheck," "guarantees your income," "continues your income," "provides a guaranteed paycheck," "provides a guaranteed income," or "fills the gaps in medicare," or use similar words or phrases unless the statement is literally true.

Q. Premium levels. An advertisement shall not state that premiums will not be changed in the future unless such is the fact.

R. Deductibles. An advertisement which states dollar amounts of benefits payable and premiums must clearly indicate the provisions of any deductible under a policy.

S. Other insurance. If a policy contains any of the following or similar provisions, an advertisement referring to the policy must not state that benefits are payable in addition to other insurance unless the statement contains an appropriate reference to the coverage excepted:

1. an "other insurance" exception, reduction, limitation, or deductible;

2. a "coordination of benefits" or "nonduplication" provision;

3. an "other insurance in this company" provision;

4. an "insurance in another insurer's" provision;

5. a "relation of earnings to insurance" provision;

6. a workers' compensation, employer's liability, occupational disease law, or automobile no-fault exception,

reduction, or limitation;

7. a reduction based on social security benefits or other disability benefits; or

8. a medicare exception, reduction, or limitation.

T. Immediate coverage or guaranteed issuance. An advertisement may refer to immediate coverage or guaranteed issuance of a policy only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

U. Premium increases or premium reductions. If an advertisement indicates an initial premium which differs from the renewal premium on the same mode, the renewal premium shall be disclosed with equal prominence and in close conjunction with any statement of the initial premium. Any increase in premium or reduction in coverage because of age shall be clearly disclosed.

V. Pre-existing conditions. An advertisement must not state that the policy contains no waiting period unless pre-existing conditions are covered immediately or unless the effect of pre-existing conditions is disclosed with equal prominence and in close conjunction with the statement.

W. Age limits. An advertisement must not state that no age limit applies to an insured or applicant unless application from applicants of any age are considered in good faith, and the statement clearly indicates the date or age to which the policy may be renewed or that the company may refuse renewal.

X. Health provisions. An advertisement must not state the following:

1. that no medical doctor's or physical examination is required; or

2. that no health, medical, or doctor's statements or questions are required; or

3. that the examination, statements, or questions are waived; or

4. otherwise state or imply that the applicant's physical condition or medical history will not affect the policy;

unless the advertisement indicates with equal prominence that the statements apply only to the issuance of the policy, or to both the issuance of the policy and the payment of claims. The advertisement must further state that the issuance of the policy or payment of benefits may depend upon the answers given in the application and the truthfulness thereof; and that pre-existing conditions are covered immediately under the policy must also be part of the advertisement.

Y. Limited accident and health policies. An advertisement of a limited accident and health policy must prominently indicate that the policy provides limited coverage with an appropriate statement such as "this is a cancer only policy" or "this is an automobile accident only policy," "this is an accident policy only--this policy does not allow coverage for sickness," "this policy provides dental insurance only."

Z. Exceptions, reductions, or limitations. An advertisement must not set out exceptions, reductions, or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions, or limitations shall fairly and accurately describe their negative features. The words "only," "minimum," "just," "merely," or similar words or phrases must not be used to refer to exceptions, reductions, or limitations.

AA. Misleading cost statements. An advertisement must not state or imply, or use similar words or phrases to the effect that because no insurance agent will call and no commissions will be paid to agents, the policy is a low cost plan, unless literally true.

BB. Awards. Devices such as a safe driver's award and other such awards must not be used in connection with an advertisement, except advertisements for property and casualty insurance.

CC. Applications. An advertisement must not use an application which is deceptively similar to paper currency, bonds, or stock certificates.

DD. Mandated benefits. An advertisement must not exaggerate the effect of statutorily mandated benefits or required policy provisions or imply that these provisions are unique to the advertised policy.

EE. Statements of coverage. An advertisement must state clearly the insurance coverage being offered.

FF. Medicare supplement policies. An advertisement which refers to a policy as being a "medicare supplement" policy must, in addition to the other disclosure requirements required by law, comply with the following requirements:

1. contain a prominent statement indicating which medicare benefits the policy is intended to supplement, for example, hospital benefits; and which medicare benefits the policy will not supplement, for example, nursing home benefits; and must clearly disclose any gaps in medicare coverage for which the policy does not provide benefits;

2. clearly indicate the extent and amount of the benefits if the policy benefits are on an expenses-incurred basis beyond what medicare covers;

3. clearly indicate the classification of the medicare supplement coverage being offered by the policy as defined by Minnesota Statutes, sections 62A.31, 62A.32, 62A.33, 62A.34, and 62A.35;

4. must not imply or state that the policy is in any manner related to the federal medicare program or any other governmental program.

GG. Federal program information. An advertisement which offers to provide information concerning the federal medicare program or any related government program or changes in the program must:

1. include no reference to the program on the envelope, the reply envelope, or on the address side of the reply postal card, if any;

2. include on any page containing a reference to the program an equally prominent statement to the effect that in providing supplemental coverage the insurer and agent involved

in the solicitation are not in any manner connected with the program;

3. contain a statement that it is an advertisement for insurance or is intended to obtain insurance prospects;

4. prominently identify the insurer or insurers which will issue the coverage; and

5. prominently state that any material or information offered will be delivered in person by a representative of the insurer, if that is the case.

4 MCAR S 1.9426 Exceptions, reductions, and limitations.

A. Disclosure. When an advertisement refers to any dollar amount of benefits payable, period of time for which any benefit is payable, cost of a policy, specific policy benefit, or the loss for which the benefit is payable, it must also disclose those exceptions, reductions, and limitations, including waiting, elimination, probationary, or similar periods, and pre-existing condition exceptions, affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

B. Pre-existing conditions summary. If the policy advertised does not provide immediate coverage for pre-existing conditions, an application or enrollment form contained in or included with an advertisement to be completed by the applicant and returned to the insurer must contain a question or statement immediately preceding the applicant's signature line which summarizes the pre-existing condition provisions of the policy.

C. Pre-existing conditions disclosure. An advertisement must in negative terms disclose the extent to which any loss is not covered if the cause of the loss is a condition which exists prior to the effective date of the policy. The expression "pre-existing conditions" shall not be used unless appropriately defined.

D. Medical exam disclosure. If a medical examination is required for a policy, an advertisement for that policy must disclose this requirement.

4 MCAR S 1.9427 Renewability, cancelability, and termination.

An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, must disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which would not have the capacity or tendency to mislead, deceive, minimize, or render obscure the qualifying conditions. An advertisement of a group or blanket policy which would otherwise be subject to the disclosure requirements of this rule need not disclose the policy's provisions relating to renewability, cancelability, and termination. The advertisement must provide, however, as a minimum, that an insured's coverage is contingent upon his or her continued membership in the group and the continuation of the plan.

4 MCAR S 1.9428 Identity.

A. Disclosure. The identity of the insurer, agents, or agency must be made clear in all advertisements or representations, whether written or oral.

B. Names. An advertisement or representation, whether written or oral, must not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol, or any other device which has the capacity or tendency to mislead or deceive as to the identify of the insurer, agents, or agency.

C. Connection with a government agency. An advertisement or representation, whether written or oral, must not use any combination of words, symbols, or materials which, by its content, phraseology, shape, color, nature, or other characteristics, is so similar to combinations of words, symbols, or materials used by federal, state, or local government agencies that it tends to confuse or mislead

prospective buyers into believing that the solicitation is in some manner connected with the government agency.

4 MCAR S 1.9429 Testimonials, endorsements, or commendations by third parties.

A. Disclosure of interests. If a person, group, or association making a testimonial, endorsement, or a commendatory statement concerning the insurer has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, the facts must be disclosed in the advertisement or representation, whether written or oral. If the person, organization, or association is compensated for making a testimonial, endorsement, or commendatory statement, the facts must be disclosed in the advertisement or representation, whether written or oral, by language fully disclosing the compensation. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for the "scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment," for filming or recording of television or radio advertisements remove the filming and recording from the category of an unsolicited testimonial and require disclosure of the compensation.

B. Approvals or endorsements. An advertisement or representation, whether written or oral, must not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless that is the fact, and only if any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or by a person or persons who are in control of the insurer, the facts must be disclosed in the advertisement.

C. Genuineness. A testimonial, endorsement, or commendatory statement used in an advertisement or representation, whether written or oral, must be genuine, represent the current opinion

of the author, be applicable to the policy advertised and be accurately reproduced.

D. General restrictions. An insurer, agent, or agency shall not use a testimonial, endorsement, or commendatory statement in any advertisement or representation, whether written or oral:

1. which is fictional;

2. where the insurer, agent, or agency has some information indicating a substantial change of view on the part of the author;

3. where more than two years have elapsed from the date of the testimonial or the last confirmation of the statement without obtaining a confirmation that the statement represents the author's current opinion;

4. which does not accurately reflect the present practice of the insurer, agent, or agency;

5. which refers to a policy other than the one for which such statement was given, unless the statement clearly has some reasonable application to the other policy;

6. in which a change or omission has been effected which alters or distorts its meaning or intent as originally written; or

7. if it contains a description of benefit payments which does not disclose the true nature of the insurance coverage under which the benefits were paid.

4 MCAR S 1.9430 Jurisdictional licensing.

A. Misrepresentation. An advertisement which may be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed must not imply licensing beyond those limits.

B. Disclosure. Advertisements by direct mail insurers must indicate that the insurer is licensed in a specified state or states, or is not licensed in a specified state or states, by use of some language such as "This company is licensed in state A" or "This company is not licensed in state B."

4 MCAR S 1.9431 Approval by government agency.

A. Misleading advertisements. An advertisement or

representation, whether written or oral, must not state or imply, or otherwise create the impression directly or indirectly, that the insurer, its financial condition or status, the payment of its claims, its policy forms or the merits or desirability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any agency of this state or the federal government, unless that is the fact.

B. Licensing as endorsement disclaimed. In any advertisement or representation, whether written or oral, any reference to licensing must contain an appropriate disclaimer that the reference is not to be construed as an endorsement or implied endorsement of the insurer, agent, or agencies by the Department of Commerce or any other agency of this state.

C. Reproduction of report of examination prohibited. No advertisement or representation, whether written or oral, may reproduce any portion of a Department of Commerce report of examination.

4 MCAR S 1.9432 Introductory, initial, or special offers in limited enrollment periods.

A. Regulation. An advertisement or representation, whether written or oral, must not state or imply that a policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages not available at a later date by accepting the offer, that only a limited number of policies will be sold, that a time is fixed for the discontinuance of the sale of the policy advertised because of special advantages available in the policies, or that an applicant will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless that is fact.

B. Disclosure of enrollment period. A written advertisement shall not state or imply that enrollment under a policy is limited to a specific period unless the period of time permitted to enroll is disclosed.

C. Disclosure of similar offers. If the insurer making a special offer has previously offered the same or similar policy

on the same basis or intends to repeat the current offer for the same or similar policy, the advertisement or representation, whether written or oral, must so indicate.

D. Limits of timing of enrollment periods. An insurer must not establish for residents of this state a limited enrollment period within which an individual policy or certificate may be purchased less than six months after the close of an earlier limited enrollment period for the same or similar policy or certificate. This restriction also applies to all advertisements or representations, whether written or oral, soliciting enrollment under mass marketed or direct response solicitations for life or health insurance coverage.

4 MCAR S 1.9433 Group, quasi-group, or special class implications.

An advertisement or representation, whether written or oral, must not state or imply that prospective policyholders or members of a particular class of individuals become group or quasi-group members or are uniquely eligible for a special policy or coverage and as such will be subject to special rates or underwriting privileges or that a particular segment of people, or a particular age group or groups, unless that is the fact.

4 MCAR S 1.9434 Identification of plan or numbers of policies.

A. Benefits to depend on plan selected. When an advertisement or representation, whether written or oral, refers to a choice regarding benefit amounts, it must disclose that the benefit amounts provided will depend upon the plan selected and that the premium will vary with the amount of the benefits.

B. Benefits requiring combination of policies. When an advertisement refers to various benefits which may be contained in two or more policies, other than group policies, it must disclose that the benefits are provided only through a combination of the policies.

4 MCAR S 1.9435 Use of statistics.

A. Relevant facts. An advertisement or representation,

whether written or oral, relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. Irrelevant statistical data shall not be used. The sources of all statistical information must be disclosed in the advertisement or representation.

B. Applicable statistics. An advertisement or representation, whether written or oral, must not imply that any statistics used are derived from the policy advertised unless those statistics are derived from the policy.

4 MCAR S 1.9436 Inspection of the policy.

A. Effect. An offer in an advertisement or representation, whether written or oral, of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in the advertisement or representation.

B. Return disclosure. An advertisement or representation, whether written or oral, which refers to the provision in the policy advertised or represented regarding the right to return the policy must disclose the time limitation applicable to this right.

4 MCAR S 1.9437 Disparaging comparisons and statements.

An advertisement must not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparage, discredit, or criticize competitors, their policies, services, or business methods or competing marketing methods.

4 MCAR S 1.9438 Statement about an insurer.

An advertisement must not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, experience, or relative position in the insurance business.

4 MCAR S 1.9439 Service facilities.

An advertisement or representation, whether written or

oral, must not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy, or contain a description of a claim which involves unique or highly unusual circumstances.

4 MCAR S 1.9440 Insurer's advertising file.

A. Retention of copies. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, or group policies hereafter disseminated in this or any other state whether or not licensed in the other state. A notation must be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any policy, amendment, rider, or endorsement form advertised. The company must be able to identify and provide a copy of the policy advertised, together with any amendment, rider, or endorsement applicable thereto. All advertisements must be maintained for a period of not less than three years. The file is subject to regular and periodic inspection by the Department of Commerce.

B. Affidavit with annual statement. Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of 4 MCAR SS 1.9420-1.9442 must file with the Department of Commerce together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of their knowledge, information, and belief, that 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 the insurance laws of this state as implemented and interpreted by these rules.

4 MCAR S 1.9441 Responsibility of insurer, agent, or agency.

A. System of control required. Every insurer, agent, or agency shall establish and at all times maintain a system of

control over the content, form, and method of advertisements and representations, oral and written, concerning its policies. All advertisements and representations, whether written or oral, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised or represented.

B. Prior approval by insurer. An insurer shall require its agents or agencies and any other person or agency preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

4 MCAR S 1.9442 Penalty.

Violations of 4 MCAR SS 1.9420-1.9441 subject the violator to the penalties described in Minnesota Statutes, chapters 60A, 62A, and 72A.

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Marketing Standards

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

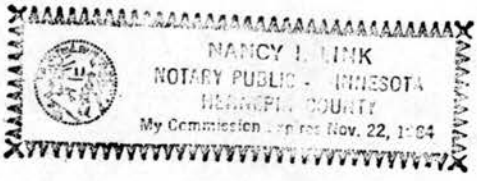
That on the 28th day of December, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Debbi J. Lindlief

Subscribed and sworn to before me this
28th day of December, 1983.

Nancy J. Link



In the Matter of the Proposed Adoption of
Rules Relating to Trade Conduct -
Marketing Standards

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 9th day of January, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached memo and corrected copy of proposed rules by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

Debbi J. Lindlief

Subscribed and sworn to before me this
9th day of January, 1984.

Elizabeth D. Moran

ELIZABETH D. MORAN
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Mar. 22, 1989

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

TO:

January 9, 1984

FROM: Richard Gomsrud
Legal Counsel

RE: Rules Governing Trade Conduct - Marketing Standards

A possible error in photocopying the above referenced rules has been discovered. Some copies may have a duplicate page or the numerical order may be in error.

To assure that all parties received a correct copy of these rules, another copy has been enclosed.

The rules were published in the State Register on January 2, 1984.

RG:dl
Enc.

Rules as Proposed (all new material)

4 MCAR S 1.9420 Scope and authority.

4 MCAR SS 1.9420-1.9442 are adopted pursuant to Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9421 Applicability.

4 MCAR SS 1.9420-1.9442 apply to any insurance advertisement or representation, written or oral, as defined in these rules, which is intended for presentation, distribution, or dissemination in the state of Minnesota, directly or indirectly, by or on behalf of any insurer or agent.

Rules 4 MCAR SS 1.9420-1.9442 are not all inclusive. The fact that a practice is not specifically prohibited in these rules does not imply acceptance of the practice. These rules are to be construed in a manner so as to carry out the stated and implied purpose of Minnesota Statutes, chapters 60A and 72A.

4 MCAR S 1.9422 Construction.

A. Advertising or representations. Whether an advertisement or representation, written or oral, has a capacity or tendency to mislead or deceive is determined by the commissioner of commerce from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, unique to the particular type of audience to which the advertisement is directed, and whether it may be reasonably comprehended by the segment of the public to which it is directed.

B. Department policy. The policy of the department of commerce, in interpreting the meaning of 4 MCAR SS 1.9420-1.9442 when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose, and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

C. Method of disclosure of required information. All

information required to be disclosed by 4 MCAR SS 1.9420-1.9442 must be set out clearly, conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it is readily noticed and not minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the contents of the advertisement or representation, whether written or oral, so as to be confusing or misleading.

D. Advertisements. Advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

4 MCAR S 1.9423 Definitions.

For the purposes of 4 MCAR SS 1.9420-1.9442 the terms in A.-I. have the meanings given them.

A. Advertisement. "Advertisement" includes:

1. printed and published material, audio visual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

2. descriptive literature and sales ads of all kinds issued by an insurer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. prepared sales talks, presentations, and material for use by agents and representations made by agents in accordance with these talks, presentations, and materials;

4. statements, written or oral, by an agent.

B. Agent, agents, or agencies. "Agent," "agents," or "agencies" includes insurance agents and agencies licensed pursuant to Minnesota Statutes, section 60A.17, insurance agencies, and designated representatives of these agents or

agencies.

C. Exception. "Exception" includes any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

D. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyd's, fraternal benefits society, self-insurer, surplus line insurer, pooled or joint self-insurance group, or self-insurance administrator, nonprofit service plan, and any other legal entity engaged in the advertisement of a policy. An insurer includes an affiliate of a group of insurers under common management and control.

E. Limitation. "Limitation" means any provision which restricts coverage under the policy other than an exception or a reduction.

F. Policy. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement, binder, or other evidence of coverage which provides insurance or self-insurance, whether on an indemnity, reimbursement, service, or prepaid basis. "Policy" includes any subscriber contract issuing coverage under a self-insurance plan, annuity, group self-insurance, or pooled or joint self-insurance employee plan.

G. Reduction. "Reduction" includes any provision which reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction not been used.

H. Self-insurer. "Self-insurer" includes any entity authorized pursuant to Minnesota Statutes, sections 65B.48 and 176.181, Minnesota Statutes, chapter 62H, Laws of Minnesota 1983, chapter 290, section 171, or Minnesota Statutes, section 471.981 and includes any entity which, for compensation employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota

Statutes, section 60A.23, subdivision 8.

I. Similar policies. "Similar policies" include policies which provide similar benefits even though there may be differences in benefit amounts, elimination periods, renewal terms, or ancillary benefits.

4 MCAR S 1.9424 Suitability of policies.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to: the customer's income; the customer's need for insurance; and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR S 1.9425 Deceptive words, phrases, or illustrations.

A. General prohibition. No advertisement or representation, written or oral, may omit information or use words, phrases, statements, references, or illustrations if the omission of the information or use of the 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 policy benefit payable, loss covered, or premium payable. 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.

B. Coverage terms. No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this

policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income," when used to express loss time benefits or similar words and phrases, in a deceptive or misleading manner so as to exaggerate any benefits beyond the terms of the policy.

C. Statements regarding tax benefits. An advertisement must not state a policy's benefits are tax free unless an explanation of the rules applicable to the taxation of these types of policy benefits are clearly shown with equal prominence and in close conjunction with the statement. An advertisement of a benefit for which payment is conditioned upon confinement in a hospital or similar facility must not state that the benefit is tax free.

D. Benefit terms. An advertisement may not use the expressions "extra cash," "cash income," "income," "cash," or similar words or phrases in such a way as to imply that the insured will receive benefits in excess of the expenses incurred while being sick, injured, or hospitalized.

E. Payment terms. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium, or use other similar language.

F. Dividends. Dividends are a return of premium and it is misleading and deceptive to refer to them as being tax free, or to use words of similar import, unless they are used within an instructive context and the nature of dividend as a return of premium is clearly indicated.

G. Dread disease policies. A policy covering only one disease or a list of specified diseases must not be advertised so as to imply coverage beyond the terms of the policy. A particular disease shall not be referred to in more than one term so as to imply broader coverage than is the fact.

H. Policy limitations. The benefits of a policy which pays

varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, must not be advertised without disclosing the limitations or reductions under which the benefits referred to are provided by the policy.

I. Maximum benefits. The maximum benefit available under a policy must not be emphasized in a manner which exaggerates its relationship to any internal limits or other conditions of the policy. Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

J. Aggregate benefits. The aggregate amounts or the monthly or weekly benefits payable under coverage such as hospital or similar facility confinement indemnity or private duty nursing must not be emphasized unless the actual amounts payable per day are disclosed with substantially equal prominence and in close conjunction with the statement. Any limitation or reduction in the policy and the number of days of coverage provided must be disclosed.

K. False statements regarding coverage. An advertisement must not state or imply that each member under a family policy is covered as to the maximum benefits advertised when such is not the case.

L. Exaggeration of certain diseases. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

M. Benefit examples. Examples of what benefits may be paid under a policy must be shown only for losses from common illnesses or injuries rather than exceptional or rare illnesses or injuries.

N. Benefit clarification. When a range of hospital room expense benefits is set forth in an advertisement, it must be made clear that the insured will receive only the benefit indicated in the policy purchased. It must not be implied that

the insured may select his room expense benefit at the time of hospitalization.

O. Benefit increases at time of disability. An advertisement must not imply that the amount of benefits payable under a loss of time policy may be increased at time of disability according to the needs of the insured.

P. Misleading payment claims. An advertisement must not state that the insurer "pays hospital, surgical, medical bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "guarantees your paycheck," "guarantees your income," "continues your income," "provides a guaranteed paycheck," "provides a guaranteed income," or "fills the gaps in medicare," or use similar words or phrases unless the statement is literally true.

Q. Premium levels. An advertisement shall not state that premiums will not be changed in the future unless such is the fact.

R. Deductibles. An advertisement which states dollar amounts of benefits payable and premiums must clearly indicate the provisions of any deductible under a policy.

S. Other insurance. If a policy contains any of the following or similar provisions, an advertisement referring to the policy must not state that benefits are payable in addition to other insurance unless the statement contains an appropriate reference to the coverage excepted:

1. an "other insurance" exception, reduction, limitation, or deductible;

2. a "coordination of benefits" or "nonduplication" provision;

3. an "other insurance in this company" provision;

4. an "insurance in another insurer's" provision;

5. a "relation of earnings to insurance" provision;

6. a workers' compensation, employer's liability, occupational disease law, or automobile no-fault exception,

reduction, or limitation;

7. a reduction based on social security benefits or other disability benefits; or

8. a medicare exception, reduction, or limitation.

T. Immediate coverage or guaranteed issuance. An advertisement may refer to immediate coverage or guaranteed issuance of a policy only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

U. Premium increases or premium reductions. If an advertisement indicates an initial premium which differs from the renewal premium on the same mode, the renewal premium shall be disclosed with equal prominence and in close conjunction with any statement of the initial premium. Any increase in premium or reduction in coverage because of age shall be clearly disclosed.

V. Pre-existing conditions. An advertisement must not state that the policy contains no waiting period unless pre-existing conditions are covered immediately or unless the effect of pre-existing conditions is disclosed with equal prominence and in close conjunction with the statement.

W. Age limits. An advertisement must not state that no age limit applies to an insured or applicant unless application from applicants of any age are considered in good faith, and the statement clearly indicates the date or age to which the policy may be renewed or that the company may refuse renewal.

X. Health provisions. An advertisement must not state the following:

1. that no medical doctor's or physical examination is required; or

2. that no health, medical, or doctor's statements or questions are required; or

3. that the examination, statements, or questions are waived; or

4. otherwise state or imply that the applicant's physical condition or medical history will not affect the policy;

unless the advertisement indicates with equal prominence that the statements apply only to the issuance of the policy, or to both the issuance of the policy and the payment of claims. The advertisement must further state that the issuance of the policy or payment of benefits may depend upon the answers given in the application and the truthfulness thereof; and that pre-existing conditions are covered immediately under the policy must also be part of the advertisement.

Y. Limited accident and health policies. An advertisement of a limited accident and health policy must prominently indicate that the policy provides limited coverage with an appropriate statement such as "this is a cancer only policy" or "this is an automobile accident only policy," "this is an accident policy only--this policy does not allow coverage for sickness," "this policy provides dental insurance only."

Z. Exceptions, reductions, or limitations. An advertisement must not set out exceptions, reductions, or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions, or limitations shall fairly and accurately describe their negative features. The words "only," "minimum," "just," "merely," or similar words or phrases must not be used to refer to exceptions, reductions, or limitations.

AA. Misleading cost statements. An advertisement must not state or imply, or use similar words or phrases to the effect that because no insurance agent will call and no commissions will be paid to agents, the policy is a low cost plan, unless literally true.

BB. Awards. Devices such as a safe driver's award and other such awards must not be used in connection with an advertisement, except advertisements for property and casualty insurance.

CC. Applications. An advertisement must not use an application which is deceptively similar to paper currency, bonds, or stock certificates.

DD. Mandated benefits. An advertisement must not exaggerate the effect of statutorily mandated benefits or required policy provisions or imply that these provisions are unique to the advertised policy.

EE. Statements of coverage. An advertisement must state clearly the insurance coverage being offered.

FF. Medicare supplement policies. An advertisement which refers to a policy as being a "medicare supplement" policy must, in addition to the other disclosure requirements required by law, comply with the following requirements:

1. contain a prominent statement indicating which medicare benefits the policy is intended to supplement, for example, hospital benefits; and which medicare benefits the policy will not supplement, for example, nursing home benefits; and must clearly disclose any gaps in medicare coverage for which the policy does not provide benefits;

2. clearly indicate the extent and amount of the benefits if the policy benefits are on an expenses-incurred basis beyond what medicare covers;

3. clearly indicate the classification of the medicare supplement coverage being offered by the policy as defined by Minnesota Statutes, sections 62A.31, 62A.32, 62A.33, 62A.34, and 62A.35;

4. must not imply or state that the policy is in any manner related to the federal medicare program or any other governmental program.

GG. Federal program information. An advertisement which offers to provide information concerning the federal medicare program or any related government program or changes in the program must:

1. include no reference to the program on the envelope, the reply envelope, or on the address side of the reply postal card, if any;

2. include on any page containing a reference to the program an equally prominent statement to the effect that in providing supplemental coverage the insurer and agent involved

in the solicitation are not in any manner connected with the program;

3. contain a statement that it is an advertisement for insurance or is intended to obtain insurance prospects;

4. prominently identify the insurer or insurers which will issue the coverage; and

5. prominently state that any material or information offered will be delivered in person by a representative of the insurer, if that is the case.

4 MCAR S 1.9426 Exceptions, reductions, and limitations.

A. Disclosure. When an advertisement refers to any dollar amount of benefits payable, period of time for which any benefit is payable, cost of a policy, specific policy benefit, or the loss for which the benefit is payable, it must also disclose those exceptions, reductions, and limitations, including waiting, elimination, probationary, or similar periods, and pre-existing condition exceptions, affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

B. Pre-existing conditions summary. If the policy advertised does not provide immediate coverage for pre-existing conditions, an application or enrollment form contained in or included with an advertisement to be completed by the applicant and returned to the insurer must contain a question or statement immediately preceding the applicant's signature line which summarizes the pre-existing condition provisions of the policy.

C. Pre-existing conditions disclosure. An advertisement must in negative terms disclose the extent to which any loss is not covered if the cause of the loss is a condition which exists prior to the effective date of the policy. The expression "pre-existing conditions" shall not be used unless appropriately defined.

D. Medical exam disclosure. If a medical examination is required for a policy, an advertisement for that policy must disclose this requirement.

4 MCAR S 1.9427 Renewability, cancelability, and termination.

An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, must disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which would not have the capacity or tendency to mislead, deceive, minimize, or render obscure the qualifying conditions. An advertisement of a group or blanket policy which would otherwise be subject to the disclosure requirements of this rule need not disclose the policy's provisions relating to renewability, cancelability, and termination. The advertisement must provide, however, as a minimum, that an insured's coverage is contingent upon his or her continued membership in the group and the continuation of the plan.

4 MCAR S 1.9428 Identity.

A. Disclosure. The identity of the insurer, agents, or agency must be made clear in all advertisements or representations, whether written or oral.

B. Names. An advertisement or representation, whether written or oral, must not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol, or any other device which has the capacity or tendency to mislead or deceive as to the identify of the insurer, agents, or agency.

C. Connection with a government agency. An advertisement or representation, whether written or oral, must not use any combination of words, symbols, or materials which, by its content, phraseology, shape, color, nature, or other characteristics, is so similar to combinations of words, symbols, or materials used by federal, state, or local government agencies that it tends to confuse or mislead

prospective buyers into believing that the solicitation is in some manner connected with the government agency.

4 MCAR S 1.9429 Testimonials, endorsements, or commendations by third parties.

A. Disclosure of interests. If a person, group, or association making a testimonial, endorsement, or a commendatory statement concerning the insurer has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, the facts must be disclosed in the advertisement or representation, whether written or oral. If the person, organization, or association is compensated for making a testimonial, endorsement, or commendatory statement, the facts must be disclosed in the advertisement or representation, whether written or oral, by language fully disclosing the compensation. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for the "scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment," for filming or recording of television or radio advertisements remove the filming and recording from the category of an unsolicited testimonial and require disclosure of the compensation.

B. Approvals or endorsements. An advertisement or representation, whether written or oral, must not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless that is the fact, and only if any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or by a person or persons who are in control of the insurer, the facts must be disclosed in the advertisement.

C. Genuineness. A testimonial, endorsement, or commendatory statement used in an advertisement or representation, whether written or oral, must be genuine, represent the current opinion

of the author, be applicable to the policy advertised and be accurately reproduced.

D. General restrictions. An insurer, agent, or agency shall not use a testimonial, endorsement, or commendatory statement in any advertisement or representation, whether written or oral:

1. which is fictional;

2. where the insurer, agent, or agency has some information indicating a substantial change of view on the part of the author;

3. where more than two years have elapsed from the date of the testimonial or the last confirmation of the statement without obtaining a confirmation that the statement represents the author's current opinion;

4. which does not accurately reflect the present practice of the insurer, agent, or agency;

5. which refers to a policy other than the one for which such statement was given, unless the statement clearly has some reasonable application to the other policy;

6. in which a change or omission has been effected which alters or distorts its meaning or intent as originally written; or

7. if it contains a description of benefit payments which does not disclose the true nature of the insurance coverage under which the benefits were paid.

4 MCAR S 1.9430 Jurisdictional licensing.

A. Misrepresentation. An advertisement which may be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed must not imply licensing beyond those limits.

B. Disclosure. Advertisements by direct mail insurers must indicate that the insurer is licensed in a specified state or states, or is not licensed in a specified state or states, by use of some language such as "This company is licensed in state A" or "This company is not licensed in state B."

4 MCAR S 1.9431 Approval by government agency.

A. Misleading advertisements. An advertisement or

representation, whether written or oral, must not state or imply, or otherwise create the impression directly or indirectly, that the insurer, its financial condition or status, the payment of its claims, its policy forms or the merits or desirability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any agency of this state or the federal government, unless that is the fact.

B. Licensing as endorsement disclaimed. In any advertisement or representation, whether written or oral, any reference to licensing must contain an appropriate disclaimer that the reference is not to be construed as an endorsement or implied endorsement of the insurer, agent, or agencies by the Department of Commerce or any other agency of this state.

C. Reproduction of report of examination prohibited. No advertisement or representation, whether written or oral, may reproduce any portion of a Department of Commerce report of examination.

4 MCAR S 1.9432 Introductory, initial, or special offers in limited enrollment periods.

A. Regulation. An advertisement or representation, whether written or oral, must not state or imply that a policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages not available at a later date by accepting the offer, that only a limited number of policies will be sold, that a time is fixed for the discontinuance of the sale of the policy advertised because of special advantages available in the policies, or that an applicant will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless that is fact.

B. Disclosure of enrollment period. A written advertisement shall not state or imply that enrollment under a policy is limited to a specific period unless the period of time permitted to enroll is disclosed.

C. Disclosure of similar offers. If the insurer making a special offer has previously offered the same or similar policy

on the same basis or intends to repeat the current offer for the same or similar policy, the advertisement or representation, whether written or oral, must so indicate.

D. Limits of timing of enrollment periods. An insurer must not establish for residents of this state a limited enrollment period within which an individual policy or certificate may be purchased less than six months after the close of an earlier limited enrollment period for the same or similar policy or certificate. This restriction also applies to all advertisements or representations, whether written or oral, soliciting enrollment under mass marketed or direct response solicitations for life or health insurance coverage.

4 MCAR S 1.9433 Group, quasi-group, or special class implications.

An advertisement or representation, whether written or oral, must not state or imply that prospective policyholders or members of a particular class of individuals become group or quasi-group members or are uniquely eligible for a special policy or coverage and as such will be subject to special rates or underwriting privileges or that a particular segment of people, or a particular age group or groups, unless that is the fact.

4 MCAR S 1.9434 Identification of plan or numbers of policies.

A. Benefits to depend on plan selected. When an advertisement or representation, whether written or oral, refers to a choice regarding benefit amounts, it must disclose that the benefit amounts provided will depend upon the plan selected and that the premium will vary with the amount of the benefits.

B. Benefits requiring combination of policies. When an advertisement refers to various benefits which may be contained in two or more policies, other than group policies, it must disclose that the benefits are provided only through a combination of the policies.

4 MCAR S 1.9435 Use of statistics.

A. Relevant facts. An advertisement or representation,

whether written or oral, relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. Irrelevant statistical data shall not be used. The sources of all statistical information must be disclosed in the advertisement or representation.

B. Applicable statistics. An advertisement or representation, whether written or oral, must not imply that any statistics used are derived from the policy advertised unless those statistics are derived from the policy.

4 MCAR S 1.9436 Inspection of the policy.

A. Effect. An offer in an advertisement or representation, whether written or oral, of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in the advertisement or representation.

B. Return disclosure. An advertisement or representation, whether written or oral, which refers to the provision in the policy advertised or represented regarding the right to return the policy must disclose the time limitation applicable to this right.

4 MCAR S 1.9437 Disparaging comparisons and statements.

An advertisement must not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparage, discredit, or criticize competitors, their policies, services, or business methods or competing marketing methods.

4 MCAR S 1.9438 Statement about an insurer.

An advertisement must not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, experience, or relative position in the insurance business.

4 MCAR S 1.9439 Service facilities.

An advertisement or representation, whether written or

oral, must not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy, or contain a description of a claim which involves unique or highly unusual circumstances.

4 MCAR S 1.9440 Insurer's advertising file.

A. Retention of copies. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, or group policies hereafter disseminated in this or any other state whether or not licensed in the other state. A notation must be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any policy, amendment, rider, or endorsement form advertised. The company must be able to identify and provide a copy of the policy advertised, together with any amendment, rider, or endorsement applicable thereto. All advertisements must be maintained for a period of not less than three years. The file is subject to regular and periodic inspection by the Department of Commerce.

B. Affidavit with annual statement. Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of 4 MCAR SS 1.9420-1.9442 must file with the Department of Commerce together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of their knowledge, information, and belief, that 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 the insurance laws of this state as implemented and interpreted by these rules.

4 MCAR S 1.9441 Responsibility of insurer, agent, or agency.

A. System of control required. Every insurer, agent, or agency shall establish and at all times maintain a system of

control over the content, form, and method of advertisements and representations, oral and written, concerning its policies. All advertisements and representations, whether written or oral, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised or represented.

B. Prior approval by insurer. An insurer shall require its agents or agencies and any other person or agency preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

4 MCAR S 1.9442 Penalty.

Violations of 4 MCAR SS 1.9420-1.9441 subject the violator to the penalties described in Minnesota Statutes, chapters 60A, 62A, and 72A.

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Marketing Standards

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 28th day of December, 1983.

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TRADE CONDUCT - MKTG. STDS.

Requests for Rules

		Req	Sent
Rep. Phyllis Kahn	234 SOB, Attn. Sarah Meyer	12-16-83	12-19-83
Keith Loveland	5720 Green Circle Dr, Minnetonka		12-19-83
Constance Des Vernine	INA-Aetna, Box 1190, MPLS 55440		12-19-83
Richard B. Allyn, Esq.	Robins, Zelle, Larson + Kaplan 33 S. 5th St, MPLS 55402	11-1-83	12-19-83
Kirby Dohl	P.O. Box 417, Cold Spring, MN 56320	12-21-83	12-21-83
Cindy Thomas	118 SOB, St. Paul, MN 55155	12-21-83	12-21-83
Diane Deis	Mutual Protective IC, 4625 Farnam, Omaha, NE 68102	12-29-83	12-30-83
Paul Brakke	2236 Marshall Ave., St. Paul 55104	1-23-84	1-24-84
William Peterson	P.O. Box 185, Mora, MN 55051	2-17-84	2-23-84
Mid-America Mutual Life	2021 E. Hennepin, MPLS, MN 55413	2-21-84	2-22-84
Gary Winsett	1519 Grantham, St. Paul, MN 55108	2-23-84	2-24-84
Michael S. Skaran	4721 15th Ave NW, Rochester, MN 55901	2-27-84	2-29-84
Eric Christiansen	6701 Penn Ave. S., Richfield, MN 55423	2-29-84	3-1-84
John W. Palan	The Insurance Depot of Faribault 411 NW 4th St, P.O. Box 839 Faribault, MN 55021	3-1-84	3-2-84
Denise Reuter	7574 W. 147th, P.O. Box 24329 Apple Valley, MN 55124	3-2-84	3-2-84

MR. GOMSRUD, WOULD YOU PLEASE SEND

ME A COPY OF (INSURANCE: MARKET CONDUCT RULES

THANKYOU

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ROCHESTER, MINN.
55901

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules Relating to Trade Conduct -
Marketing Standards

I certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M., this 9th day of January, 1984.

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STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Governing Trade Conduct -
Marketing Standards

STATEMENT OF NEED
AND REASONABLENESS

STATEMENT OF NEED AND REASONABLENESS

Minn. Stat. § 72A.19, subd. 2, 72A.20, subd. 12, and 60A.17, subd. 15 grants the Commissioner authority to "adopt rules pursuant to chapter 14 to further implement and administer" the provisions of § 60A.17 and chapter 72A. The cited sections and chapter deal with insurance marketing. To properly enforce these sections there is a need to more specifically set forth what constitutes acceptable and unacceptable practices.

The staff of the Department of Commerce has noted the re-occurrence of a number of similar practices and methods of sales conduct which are believed to be improper. Although many of the persons involved in the marketing of insurance products are diligent in their efforts to properly represent the products they sell, there are occasions in which the method of marketing or other means by which the product is represented are so improper that reasonable rules are necessary to assure that those people to whom the marketing is directed receive accurate and truthful information in regard to the products they are purchasing. Reasonable standards also allow those persons involved in the marketing insurance who are attempting to operate in a reputable manner to have clear standards for use in designing the marketing campaigns and carrying them out.

Definite standards will allow the Department to quickly and certainly stop improper marketing methods and assure that the citizens of the State of Minnesota receive accurate and true information about the products they are purchasing.

It is difficult for someone who is accurately representing his product to compete with someone who is willing to make any representations no matter what the actual fact is. By requiring all parties marketing

insurance products to meet the same standards products will be purchased by persons based upon their actual value rather than upon inaccurate, inflated and untruthful representations as to what the products are.

At present insurance rules exist in the general area of advertising for specific lines of insurance. Certain of the standards adopted in these rules duplicate existing rules but expand them to cover all lines of insurance. The general intent of these rules is to have a comprehensive body of standards applicable to all lines of insurance and based on general principles of truth and forthrightness.

When these rules have been adopted, the existing rules will be repealed.

The rules in question set forth in great detail many of the practices that are prohibited and set standards and principles in regard to other methods and means of marketing.

HISTORY

On September 5, 1983, the Commissioner of Commerce published Notice of Intent to Solicit Outside Information at 8 S.R. 1568 for his consideration in the promulgation of regulations pursuant to chapters 60A and 72A of Minnesota Statutes. After review of the comments solicited, the Commissioner proposed rules governing insurance marketing standards on December 28, 1983 and published the proposed rules in the State Register on January 2, 1984 (8 S.R. 1568-1576).

FACTS ESTABLISHING REASONABLENESS

4 MCAR § 1.9421 Applicability. Proposed rule for 4 MCAR 1.9421 states the intended scope of the rules. Said scope is broadly construed as being any insurance advertisement or representation written or oral occcuring directly or indirectly in the State of Minnesota. The intent is to reach every aspect of insurance marketing.

4 MCAR § 1.9422 Construction. Proposed rule 4 MCAR 1.9422 sets forth the general philosophy and policy of the Department in applying these rules and evaluating conduct that may be within their jurisdiction. This rule looks at the overall capacity of the advertisement to be a means of deception or confusion. The perception of the advertisement or representation by an average person is the basic standard set forth. The Depart-

ment will consider all matters pertaining to the situation in evaluating the advertisement. This rule at subpart C contains a requirement of conspicuous notice for any required statements so as not to allow such required notices to be lost in the body of documents and advertising therefore reducing the impact of the intended disclosure to the public.

Subpart D requires advertising and representations to be clear and complete and without the capacity to mislead or deceive.

4 MCAR § 1.9423 Definitions. This section sets forth the definition of eight (8) terms used in the rules. The definitions are necessary to enable persons affected by the rules to comprehend their full meaning, effect and applicability.

A. The definition of an advertisement is intended to include virtually all materials and methods used in the marketing of insurance products.

B. Agent, agents and agencies for the purpose of these rules are those licensed pursuant to Minn. Stat. § 60A.17 and their designated representatives. Because of the general use of the word "agent or agencies" in a legal context limitation of the affected parties to those licensed under § 60A.17 is necessary for clarification purposes.

C. Exception. The word "exception" is used in many insurance policies and throughout the insurance industry and may from time to time have different meanings. Accordingly, a specific definition noting that "exceptions" is any provision whereby coverage is eliminated was deemed necessary.

D. Insurer. As insurer does not always have the same meaning in each and every statutory scheme or context, it was necessary to include a definition of the same for purposes of these rules. The definition in this instance is a broad definition intended to include all entities engaged in the marketing of insurance policies.

E. Limitation. Limitation required definition for the same reason as exception, that it may have different meanings in different policies in different circumstances and to avoid confusion the specific definition for purposes of the rules was required.

F. Policy. The traditional insurance policy issued in the life insurance industry has over the years come to be only one of many means of setting forth the contractual relationship between an insured and insurer.

In addition, self-insurance entities, pools, prepaid insurance and other plans of insurance have all arisen. So as to be clear that the intent of the rules was to cover all of these different ways of providing insurance, a definition of policy was required which would include all of these terms.

G. Reduction. Reduction required definition for the same reason as exception and limitation, that it may have different meanings in different policies in different circumstances and to avoid confusion the specific definition for purposes of the rules was required.

H. Self-Insurer. Since self-insurer is both a descriptive term and may also have a statutory definition for purposes of clarifying those would come under the scope of these rules, it was necessary to specifically refer to the self-insurers so covered as being those authorized by the statutes cited in the definition.

I. Similar policies. Because of the wide variety of questions that might arise as to what constitutes a similar policy and to preclude the endless disputes that might arise as to whether policies with similar benefits but not similar coverages or other circumstances would be included or not included a definition based upon similarity of benefits was determined to be appropriate.

4 MCAR § 1.9424 Deceptive Words, Phrases or Illustrations. This section incorporates various terms, phrases and representations prohibited in the existing rules and in addition expands on the existing rules both as to the types of insurance covered and the representations prohibited.

A. Generally this rules prohibits omissions which have the affect of misleading or deceiving. It requires accurate and complete disclosures and representations. The practice of providing the policy to the person immediately prior to the consummation of sale or the offer of a refund are not allowable means of curing the improper practices. It is the intent of this rule to prohibit such practices not to provide a means of redress upon their discovery. If the practices never occur, redress is not necessary.

B. Based upon the past experiences of the Minnesota Department of Commerce and other insurance agencies in the nation the use of certain words and phrases which are listed in subpart B have been found to consistently be used in an abusive, deceptive or misleading manner.

Accordingly, subpart B prohibits specifically identified phrases especially when used to exaggerate the benefits so that they appear to be more than is actually available under the terms of the policy.

Subpart C refers to a common marketing device which is used and abused regarding the policy's tax benefits. Because tax benefits of any particular policy or any particular tax situation are dependent upon a number of factors and have greater or lesser significance to each individual, each individual should have an explanation of the applicable tax rules provided to them at the same time the representations are being made so that they know if that tax situation applies to them or if there are any limitations or lessening of benefits peculiar to them.

Subpart D. Benefit Terms. Certain expressions have been used to give the impression that benefits may be payable in excess of actual expenses incurred, in effect a windfall. In truth, no benefits in excess of expenses incurred are payable. Therefore, the use of phrases in such a manner as to create the wrongful implication that they are is prohibited.

Subpart E. Payment Terms. A common selling device is to state that certain benefits or services are free or at little or not additional cost to the purchaser when in fact said benefits or services are actually included in the normal premium charge. Inference is made that something is being received for nothing or beyond what you would receive under another policy when in fact that is not the case. Therefore, unless in truth those benefits are free or without additional cost these words or phrases may not be used.

Subpart F. As indicated in regard to the previous section C pertaining to the tax benefits, it is often a common marketing tool to refer to the tax consequences of certain aspects of a policy. One way is to advise someone that a dividend is tax free thereby implying that by purchasing this policy you are receiving some kind of a tax benefit. The usual implication of this type of promotion is to imply that you are gaining something such as being able to receive something that would normally be taxable but because of the use of this policy make it a nontaxable item. This is not true in almost every case. As throughout the rules, the intent of the prohibition is to require an actual representation of what the situation is.

Subpart G. Dread Disease Policies. Single disease policies often times imply they cover more situations than they actually do. The means of doing this is to refer to disease under many names both scientific and common when in fact there is only one disease involved. Once again the rule requires that the coverage and disease be accurately represented to the purchaser.

Subpart H. Policy Limitation. Many people to whom a policy is advertised do not understand the limitations of the benefits they may receive under that policy. In addition, in many policies those benefits vary as the circumstances vary. Often times only the best situation in regard to what they may collect is represented to a potential purchaser. Those circumstances in which they receive less are either not specified at all or are down-played. This rule requires that if the benefits are represented to the potential purchaser the limitations on said benefits must also be disclosed.

Subpart I. Maximum Benefits. Exaggeration of the benefit of the policy to the potential purchaser is done through various representations which are "true" in that it is possible for someone to collect the benefits as represented. The example used in the rule is the phrase "this policy pays $1800 for hospital room and board expenses". While this may be literally true, the maximum daily benefit and the maximum time limit for hospital room and board expenses may be so low as to make the policy far from desirable. However, the emphasis on the high figure as collectable without further explanation gives an incorrect impression. Once again the intent of the rule is to provide the consumer with all the pertinent information necessary to make an appropriate judgment as to the merits of a policy or particular aspect of a policy.

Subpart J. Aggregate Benefits. The requirement set forth here is very similar to the proceeding one pertaining to maximum benefits and also requires that aggregate amounts not be emphasized without giving equal prominence to the amounts payable per day and any limitations that would affect these aggregate amounts be also disclosed. The consumer would thus know both how much he could possibly get on an aggregate basis and at the same time know how little he could get on a daily basis subject to any other limitations there might be. An informed decision could be made on the basis of the merits of the coverage.

Subpart K. False Statements Regarding Coverage. This rule is fairly self-explanatory in that it prohibits a false statement as to the coverage of the entire family when that is not that case, thereby making the consumer believe they are getting something more than they in fact are. This perception may lead someone to purchase a policy because of a broader coverage they perceive it to have than it in fact does.

Subpart K. Exaggeration of Certain Diseases. One method of selling certain policies has been to play on the fear of an exotic disease or diseases never found in a particular group of people. These particular diseases are prominently used as a criteria for the purchase of the policy by the potential buyer. In fact, for purposes of these diseases the policy would have little, if any, benefit to the buyer. If the policy is purchased for that reason, the purchaser would be getting something that would be worthless to him or which he would rarely, if ever, collect under.

Subpart L. Benefit Examples. Once again it is often times the practice of people promoting a particular policy to take the most generous and extreme payment available under the particular policy and use it as an example when selling the policy. In fact it would be highly unlikely that the average person would collect either that amount or under those circumstances. The likely amount collected or method of collection is not disclosed and the potential purchaser is therefore uninformed as to the actual and probable benefit of a policy to him. Such practices are prohibited by this rule. Any examples used must be shown for common illnesses and injuries so that the potential purchaser has a reasonable basis upon which to make his purchase.

Subpart M. Benefit Clarification. Certain promotions pertaining to hospital room expense benefits set forth a range of benefits in such a manner that it could be perceived or it is the intention that it would be perceived that all of those expense benefits would be available to the policyholder at the time of hospitalization. In fact at the time of purchase of the policy the benefits are set. The fact that the particular policy has specific benefit limits must be disclosed so that the purchaser knows what he is buying.

Subpart N. Benefit Increase at Time of Disability. Certain advertisements have implied that benefits payable under a loss of time policy increase or may increase if the needs of the insured increase. In fact, such benefits are limited by the policy provisions and not according to the needs of the insured. That fact must accurately be stated.

Subpart O. Misleading Payment Claims. It has been the experience of the Department and other agencies in regard to insurance advertising that words similar to those listed in subsection P are used to imply a broader coverage than they actually do. As these particular phrases are capable of abuse, their use must be restricted to situations in which they are in fact the truth. The intent is to provide the consumer with information on the coverage they are actually getting rather than what they appear to be getting.

Subpart Q. Premium Levels. Once again this particular rule speaks for itself and prohibits a false statement that premiums will not be changed. In some advertisements, the implication has been made that they will not when in fact they will.

Subpart R. Deductibles. This particular requirement ties in to some of the previous sections mentioned and requires that when benefits payable and premiums are made a part of the advertising, limitations on that policy, such as the deductible, must also be equally prominent. This prevents a common type of marketing abuse where all of the positive aspects of the policy are represented but not any of the limitations. The consumer does not have all the information they need to make a reasonable judgment as to the value of the policy to them.

Subpart S. Other Insurance. Often the consumer is confused by advertisements which speak about benefits payable in addition to other insurance. There are a wide variety of circumstances in which benefits may or may not be payable in addition to other insurance and the consumer must have clear and accurate information available to them at the time of the purchase to make a determination as to the applicability of this particular benefit to them. The rule states a number of instances and specific language which trigger the applicability of this rule.

Subpart T. Immediate Coverage or Guaranteed Issuance. The use of the phrase "immediate coverage or guaranteed issuance" is often abused. Therefore, the use of the term is prohibited by this rule unless the issuer has set up appropriate procedures to ensure that the policy is actually issued in a reasonable time.

Subpart U. Premium Increases or Premium Reductions. The Department has found that people are induced to purchase a policy based upon the initial premium stated in the advertisement. The renewal premium is often at variance with this initial premium and is usually higher than the initial premium. Also, there are often reductions in the coverage because of age. In both instances, the rule requires that the consumer have this information available to them at the time the policy is being represented to them so they can be aware of all circumstances that would be appropriate for their consideration in purchasing the policy.

Subpart V. Pre-existing Conditions. A common advertising statement is that the policy contains no waiting period. The Department has received a number of complaints about such policies when it turns out that pre-existing conditions may negate this assertion. Therefore, the use of this phrase is prohibited unless any limitations, such as the existence of pre-existing conditions, is also communicated to the consumer in the advertisement.

Subpart W. Age Limits. For the older person faced with ever increasing cost of insurance because of his age the phrase "no age limit applies" is a particularly attractive marketing tool. In many cases, the department has found that where such phrases are used there is in fact different considerations given to the policy based upon the age of the applicant. In some instances, the policy cannot be renewed beyond a certain date or age or the company may have the freedom to nonrenew. Therefore, if any of these limitations are in fact available, the phrase "no age limit" cannot be used except in the case where all limitations are set forth.

Subpart X. Health Provisions. Persons with questionable medical conditions or those that just don't want to be bothered with physical examinations or doctor's reports are often induced to consider a policy or even purchase a policy based upon the representation that no medical doctor's or physical exam or report are required or additionally that no

questions regarding the medical history of the applicant will be asked. The truth has often been that that is not a correct statement because while it may apply to the issuance of the policy, payment of claims may be affected by these circumstances. Therefore, a requirement of a clear statement as to what in fact the situation is is required. In certain instances, there may be a time period during which pre-existing conditions are not covered. That must be disclosed to the consumer so he has all the available information necessary for him to evaluate the policy.

Subpart Y. Limited Accident and Health Policies. Often the advertisement pertaining to policies having a limited scope do not clearly set forth the limitations of coverage in the policy. Accordingly, consumers often find that they purchased a policy which they thought covered a broader range than it actually does when they submit a claim. Accordingly, this rule requires full disclosure as to the limitations of a policy.

Subpart Z. Exceptions, Reductions or Limitations. As has previously been stated in these rules, there are requirements that all exceptions, reductions or limitations be displayed with appropriate prominence so that the consumer may measure them against the benefits being claimed for the policy. One method of avoiding this particular requirement is to represent exceptions, reductions or limitations as having a positive or beneficial aspect rather than as a negative. This rule requires that these exceptions, reductions or limitations be stated in a way so that the consumer has a reasonable interpretation of what they are and the effect on the policy so that they can make an informed decision.

Subpart AA. Misleading Cost Statements. Certain policies have been sold with the representation that they are a low cost policy and that this low cost is due to the fact that no insurance agent will call and no commission will be paid. In fact, this may not be the reason why a policy is a low cost policy. The consumer may have an improper interpretation as to the value of the policy. Once again this rule requires a truthfulness.

Subpart BB. Awards. Devices such as safe drivers and other awards have been used as a marketing tool. They often are misleadingly used, create confusion on the part of the consumer or are used to induce

him to be favorably disposed to purchase a particular policy. Accordingly, since they have little if any connection to the value of the policy the consumer is purchasing, their use is prohibited.

Subpart CC. Applications. Certain policies marketed in the past and some currently being marketed use applications deceptively similar to paper currencies, stocks and bonds and other legal type of documents that have no correlation or connection with the policy at hand. They are merely a marketing device which may confuse and has in fact confused applicants.

Subpart DD. Mandated Benefit. The department is aware of certain insurers and others who market a policy emphasizing certain benefits or policy provisions as a reason to buy that particular policy over others. In fact the items touted are statutorily mandated and all similar policies contain these benefits. As this is misleading to the consumer and is intended to make him believe he is receiving something he would not get from another policy, its use is prohibited by this rule.

Subpart EE. Statements of Coverage. From time to time the department has discovered or it has been brought to their attention that certain advertisements do not state what the insurance coverage is that is being offered. In other instances, it is quite confusing as to what is being offered. Accordingly, this rule merely requires that the consumer know what he is being asked to consider purchasing.

Subpart FF. Medicare Supplement Policies. Medicare supplement policies have been subject to a great deal of abuse and the department and the attorney general's office have been actively involved in preventing those abuses for quite some time. This rule is a result of certain abuses found in the marketing of these policies. In most instances they are being marketed to people who are elderly and in many cases unsophisticated and not highly knowledgeable in matters of insurance or who are motivated by fear of health problems and the accompanying economic dangers that it may create. Accordingly, the rule sets forth very specific items that must be included in a medicare supplement advertisement as opposed to a general advertising requirement. This rule is in addition to other general requirements for advertising. The information required by this rule allow the elderly consumer to make a reasoned evaluation of the benefits of the policy being offered.

Subpart GG. Federal Program Information. A marketing tool used in the past and currently being used in regard to the medicare program as well as certain other similar governmental programs has been to offer information to the consumer in regard to the program. This has been used when medicare benefits change and everyone is quite concerned about what the changes are and their applicability to them. Information is at a premium and people are very prone to respond to any offer of that information. Such offers are then tied into the marketing of a particular insurance product relative to that federal program. In the past, the department has received information regarding the marketing of such programs and the offering of the information in a manner which would lead one to believe that the information that is being provided by the governmental agency administering the program or a government agency involved with the program. It is often the general impression of such informational offerings that the governmental agency is somehow involved. The fact that this is an insurance marketing device and that a particular policy of insurance is being offered is not well disclosed. Accordingly, this rule requires such disclosure as well as a statement of the fact that the offering insurer or agent is not affiliated with the government or that particular federal program. The consumer is thus appraised of the fact that this is a marketing device not a representation by the government as to the merits of this particular insurance program and can make their judgment accordingly.

4 MCAR § 1.9425. Exceptions, Reductions and Limitations. This particular rule applies primarily to health and accident insurance. Positive aspects of a policy are often prominently displayed in an advertisement. Negative aspects such as exceptions, reductions and limitations such as waiting, elimination, probationary periods, pre-existing conditions and the like which affect the overall benefit to the consumer of the policy are often excluded from the advertisement or downplayed. It is a common source of complaint to the department coming usually after the consumer has attempted to collect on the policy, that they were mislead by the advertisement and believed that there were no exceptions, reductions or limitations or that they were less than they in fact turned out to be. This rule requires an even-handed approach in representing both positive and negative aspects of a policy.

Subpart B. Pre-existing conditions are a source of complaint to the department. The effect of pre-existing conditions are often not adequately represented to the consumer and the effect of said pre-existing conditions is not known to them until after they have purchased a policy. This rule merely requires that the applicant be advised as to what the situation actually is.

Subpart C. This is similar in nature to Subpart B in regard to pre-existing conditions and deals in an area that generates the same complaints or is part of many of the same complaints. Representation of the effect of pre-existing conditions is not often clear from the advertising. This rule requires that pre-existing conditions must be defined clearly and that they be stated in negative terms so that the intent and the effect is known to the consumer.

Subpart D. Medical Exam Disclosure. Usually this requirement is lumped with the pre-existing and similar complaints where someone finds after applying for a policy that a medical examination is in fact required. Often time this leads to the applicant having his initial premium tied up by the company while the examination is being conducted and the policy being reviewed. The applicant may then still be denied coverage and it may take him even longer to have his premium returned to him. In the interim, he is often without insurance coverage. Had he been aware of this requirement, he may have made other arrangements for insurance.

4 MCAR § 1.9426. Renewability, Cancellability and Termination. A common source of complaints to the department in regard to the area of renewability, cancellability and termination is the inability of the average person to understand from the advertising exactly what the applicable requirements are in regard to these three items. This rule requires that statements in regard to these particular items must be made in a manner that doesn't have the capacity to or the tendency to mislead, deceive, minimize or render obscure the qualifying condition. Any representations must be made in a manner that the consumer can comprehend and reasonably use in evaluating the policy. Certain exceptions to this particular rule are made for group or blanket policies where the coverage is contingent upon the insured's membership in the group and the continuation of the plan.

4 MCAR § 1.9427. Identity.

Subpart A. Disclosure. The department has in the past received complaints that for varying reasons the identity of the insurer, agents or agencies are not as set forth in an advertisement. This requires the consumer to call or otherwise contact the parties to determine the identities. The consumer may or may not wish to deal with the particular insurer, agent or agency or may want to independently evaluate the product being offered without the necessity of contacting the insurer, agent or agency. It also makes it difficult for a consumer to have the coverage evaluated by his current insurance agent or other person unless he contacts the offering party and secures that information. It is unduly burdensome and has no particular benefit to the consumer.

Subpart B. Names. For a variety of reasons trade names, names of government agencies or programs or other devices are used to obscure the identity of the insurer, agent or agency offering a particular product. Often this is done to give a greater weight of authority to the advertisement then it normally would have had. This rule merely requires truth in the representations as to who is involved and what their capacity is.

Subpart C. Connection with a Government Agency. For a variety of reasons trade names, names of government agencies or programs or other devices are used to imply an association with a government agency. This rule merely requires truth in the representations as to who is involved and what their capacity is.

4 MCAR § 1.9428. Testimony as Endorsements or Accomodations by Third Party.

Subpart A. Persons are often times swayed by public figures and other's recommendations of a particular insurance product, whether or not such persons have any expertise or experience in the insurance industry. Where that representation is secured by compensation this rule requires that the fact that person making the testimonial is compensated must be disclosed. This allows the consumer to give the endorsement its proper and appropriate weight and consideration when evaluating the plan.

Subpart B. Approvals or Endorsements. The approval by certain groups, societies, individuals and other people may be a significant factor in the purchase of a particular policy, especially in the case of proce-

dures, organizations or organizations, societies or associations in which the person is a member. This rule merely requires that the representation not be made unless that is fact and that in addition if organization is one controlled or in some way having a relationship with the insurer, that relationship be disclosed as well. Once again the purpose of this rule is to allow the consumer to have all the information he needs to make an accurate evaluation of the policy and that the information be true and correct.

Subpart C. Authenticity. An endorsement or testimonial may be a significant factor in the purchase of a policy. Accordingly, if such an endorsement is used, it must be genuine; it cannot be outdated, be inaccurate or not applicable to the specific policy being advertised. An endorsement given several years ago in regard to an older or different policy cannot be used.

Subpart D. General Restrictions. In dealing with testimonials, it may be difficult for the parties using them to determine when they may or may not use a testimonial or an endorsement. In addition to the criteria set forth above, this rule sets forth specific instances in which the use of a testimonial is prohibited.

4 MCAR 1.9429. Misrepresentation.

Subpart A. Jurisdictional Licensing. Because advertisements may be made over television and radio and newspapers or other publications which cover areas beyond those in which an insurer is licensed the consumer has no way to know whether or not the insurer is licensed where they reside. The insurer is required, when an advertisement will extend beyond the jurisdiction in which he is licensed, not to imply licensings beyond that limit.

Subpart B. Disclosure. This particular requirement is applicable to direct mail insurers only. Because their solicitations extend beyond the states in which they are licensed and it is often times important to the consumer to know whether or not a company is licensed in their state, an affirmative requirement for advising the consumer as to which state the insurer is licensed in is set forth.

4 MCAR § 1.9430 Approval by Government Agency.

Subpart A. Misleading Advertisement. The average consumer relies upon the state and the federal government to protect him from certain behavior. Accordingly, where it is represented to them that the insurer or its products is some way regulated, reviewed, approved or accredited by any state or federal agency the status of the insurer is enhanced. This rule prohibits said representations except in the case where it is actually the fact.

Subpart B. Licensing as Endorsement Disclaimed. In some instances the fact that an insurer, agent or agency by virtue of the fact that it is licensed by the department of commerce or another agency of the state is deemed to be an endorsement or approval of the company. Since this is not in fact the case, a negative statement to the effect that licensing may not be construed as an endorsement or implied endorsement is required.

Subpart C. Reproduction of Report of Examination Prohibited. Because reports by the department of commerce state that the department does not in any way approve or endorse policies of any kind or nature they cannot be referred to in any advertisement since their only effect would be to confuse or mislead.

4 MCAR § 1.9431. Introductory, Initial or Special Offers in Limited Enrollment Periods. A common marketing device which has been the subject of a number of complaints with the department pertain to special introductory or limited time offers. It often gives the implication that this is a special circumstance that will not occur again, that it is only open for a limited time or generally that there is some benefit to the applicant to make his purchase immediately. In some cases, these representations are in fact true; in many cases they are not and the same offer is made repeatedly. Accordingly, the four subparts of this rule require that the situation be accurately represented to the consumer; that if the application is not for a limited time, it should be so stated; and that if it is, that should also be so stated. That if this same offer has been made or an offer substantially similar to it has been made from time to time in the past, that that be represented as well. The consumer may then determine the likelihood of it being offered again or whether immediate action is required.

Subpart D sets the specific time requirements for repeating limited enrollments. Said offers must be at least six months apart.

4 MCAR § 1.9432. Group, Quasi-Group or Special Class Implications. Group policies are perceived by many people as being a beneficial means of obtaining insurance for a variety of reasons including lower group rates. In many cases, this is in fact true. Therefore, the ability to be part of a group or an obtained group type ratings is an attractive inducement to purchase a particular policy of insurance. The National Association of Insurance Commissioners has expressed a concern over these kind of representations in policies. This rule prohibits making any representation that by obtaining the policy you become a member of a group or a member of a quasi-group or that you have some other particular or unique benefit. These representations can be made only if in fact they are true.

4 MCAR § 1.9433. Identification of Plan or Numbers of Policies. The department continually receives requests from the public for explanatory information in regard to policies and insurance industry terms and phrases. In many instances, the public is confused by what they are told by the sales person but they don't want to speak up and show their ignorance. Often this results in their buying something they truly do not understand. This rule deals with situations where multiple benefit amounts are offered as a choice. The advertisement must accurately represent which plan provides which benefits and the premium cost for that plan. This rule merely requires full disclosure and a truthful statement to the consumer.

Subpart B. Benefits Requiring Combination of Policies. This particular rule requires that a consumer be accurately apprised of the fact that the benefits contained in a particular advertisement can only be obtained through combining more than one policy.

4 MCAR § 1.9434. The use of statistical information is often used in advertisements to impress the consumer. Such statistical information is not prohibited by this requirement, it merely requires that the information be pertinent to the matter at hand and that it accurately reflect all relevant facts including the source of the statistical information. Once again this is merely a requirement for full disclosure and truthful representations to the consumer.

Subpart B. Applicable Statistics. This rule requires that only statistics which are applicable to the policy advertised may be used.

4 MCAR § 1.9435. Inspection of the Policy.

Subpart A. Effect. As was noted earlier in the rules, an offer for free inspection of a policy or premium refund does not cure deceptive or misleading statements. The intent of the rules is to prevent those statements, not to find a way for someone violating these rules to expiate the violation.

Subpart B. Return Disclosure. This requirement merely demands that if there is a right to return the policy and obtain a refund of the premium and that right is subject to a time limitation, that that time limitation be disclosed.

4 MCAR § 1.9436. Disparaging Comparisons and Statements. This rule states a fairness requirement in regard to comparing competing products or unfair marketing methods.

4 MCAR § 1.9437. Statements About an Insurer. This rule merely requires truthful statements and nonmisleading statements with regard to an insurer.

4 MCAR § 1.9438. Since service in regard to claims is an important consideration in purchasing a policy, only truthful statements in regard to the claims practices and settlements of the insurer can be used. Statements must be accurate and represent what may be expected from the terms and conditions of the policy. Unusual or unique circumstances are prohibited from being used as examples if they would be misleading.

4 MCAR § 1.9439. Subpart A. For purposes of maintaining a record of the advertisements used by an insurer, a retention requirement of 3 years is established.

Subpart B. Affidavit With Annual Statement. A requirement of an annual affidavit affirming that all advertisements of the insurer comply with the rules and laws of the State of Minnesota is created.

4 MCAR § 1.9440. A system of control is required to ensure that the rules are carried out. Every insurer, agent or agency is required to maintain a system of control over said advertisements and responsibility for all advertisements is placed upon the insurer whose policy is so advertised and represented.

Subpart B. In regard to the foregoing requirement, the insurer is required to maintain control over all advertisements by requiring that they be submitted to it for prior approval.

4 MCAR § 1.9441. Penalty. Establishes that violations of these rules are subject to the penalties described in Minn. Stat. §§ 60A and 62A.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Relating to Trade Conduct -
Marketing Standards

SUPPLEMENT TO
STATEMENT OF NEED
AND REASONABLENESS

These rules were promulgated because of the substantial volume of complaints in the area of Unfair Trade Practices and particularly insurance marketing standards.

The Notice of Intent to Solicit Outside Opinions Regarding Proposed Rules Relating to Unfair Trade Practices was published in the September 5, 1983 State Register (8 S.R. 415). The proposed rules were published in the January 2, 1984 State Register (8 S.R. 1568).

After the Notice to Solicit Outside Opinions was published various industry groups, individual companies and other concerned parties contacted the Department in regard to the proposed rules. Certain of these parties indicated their desire to be involved in the development of the rules. Accordingly, once an initial draft of the rules was formulated by the Department it was circulated among the concerned parties. Some of the people and groups involved included the Insurance Federation of Minnesota, State Farm Insurance Companies, Blue Cross - Blue Shield, and the St. Paul Companies. The representatives of these entities provided comments and suggested changes through written comments and at various meetings regarding the rules, which continued until shortly before publication of the rules. Numerous changes were made in the rules as a result of those discussions. The changes, in some cases, adopted the suggestions made. In other instances, changes were made which were intended to address the concerns raised even if the changes were not exactly those suggested.

At the same time these discussions were occurring, a public information program was undertaken to make the rules known to the widest spectrum of persons possible. Press releases were issued which were reported in various newspapers in the State including the Minneapolis Star and Tribune. The news releases were provided to radio and television stations as well.

The same information was also provided to various industry groups who in turn alerted their members as to the rules.

During the same period, Commissioner Hatch met with various industry groups or spoke before them. At these times, he brought the rules to the attention of these groups.

The Department made every effort to give the fact of the promulgation of these rules and their content the broadest possible exposure. The exposure that they did receive far exceeds that received by rules in the normal rulemaking process.

The rules themselves are promulgated primarily for the benefit of those whom the insurance is being sold. Their impact will be largely upon insurance companies that would not be considered small businesses pursuant to Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. While it is possible that some of the entities, particularly individual agents, affected by the rules may come under the aforementioned definition, it was determined that since the intent of the rules was to protect the purchaser, their rights and expectations should not be affected because the party they were dealing with came within the definition of a small business. Upon review it was decided that there was no reasonable basis for setting different standards for small businesses that might be subject to these rules.

No comments were received pursuant to the Notice required by Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. None of the comments previously received in regard to the rules addressed the question of their impact on small business.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Marketing Standards

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. § 14.16:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, May 30, 1984, for review as to form and legality. Pursuant to Minn. Stat. § 14.17, the Attorney General will not approve the rules for at least 20 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Debbi Lindlief, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

Michael A. Hatch
Commissioner of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Marketing Standards

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Thomas F. Pursell, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Thomas F. Pursell
Special Assistant Attorney General

Dated: May 31, 1984

In the Matter of the Proposed Adoption of Rules Relating to Trade Conduct - Marketing Standards

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Debbi J. Lindlief, being first duly sworn, deposes and says:

That on the 30th day of May, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail System for United States mailing (or) United States mail] at the City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Debbi J. Lindlief

Subscribed and sworn to before me this 30th day of May, 1984.

Nancy I. Link

NANCY I. LINK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 22, 1984

Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Insurance Marketing Standards

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules wihtout a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, chapters 60A and 72A. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed (all new material)

4 MCAR § 1.9420 Scope and authority.

4 MCAR §§ 1.9420-1.9442 are adopted pursuant to Minnesota Statutes, chapters 60A and 72A.

4 MCAR § 1.9421 Applicability.

4 MCAR §§ 1.9420-1.9442 apply to any insurance advertisement or representation, written or oral, as defined in these rules, which is intended for presentation, distribution, or dissemination in the state of Minnesota, directly or indirectly, by or on behalf of any insurer or agent.

Rules 4 MCAR §§ 1.9420-1.9442 are not all inclusive. The fact that a practice is not specifically prohibited in these rules does not imply acceptance of the practice. These rules are to be construed in a manner so as to carry out the stated and implied purpose of Minnesota Statutes, chapters 60A and 72A.

4 MCAR § 1.9422 Construction.

A. Advertising or representations. Whether an advertisement or representation, written or oral, has a capacity or tendency to mislead or deceive is determined by the commissioner of commerce from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, unique to the particular type of audience to which the advertisement is directed, and whether it may be reasonably comprehended by the segment of the public to which it is directed.

B. Department policy. The policy of the department of commerce, in interpreting the meaning of 4 MCAR §§ 1.9420-1.9442 when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose, and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

C. Method of disclosure of required information. All information required to be disclosed by 4 MCAR §§ 1.9420-1.9442 must be set out clearly, conspicuously, and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it is readily noticed and not minimized, rendered obscure, or presented in an

ambiguous fashion or intermingled with the contents of the advertisement or representation, whether written or oral, so as to be confusing or misleading.

D. Advertisements. Advertisements and representations must be sufficiently complete and clear, under the circumstances in which they are made, to avoid deception or the capacity or tendency to mislead or deceive. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, must not be used.

4 MCAR § 1.9423 Definitions.

For the purposes of 4 MCAR §§ 1.9420-1.9442 the terms in A.-I. have the meanings given them.

A. Advertisement. "Advertisement" includes:

1. printed and published material, audio visual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, other periodicals, radio scripts, television scripts, billboards and other similar displays, excluding advertisements prepared for the sole purpose of obtaining employees, agents, or agencies;

2. descriptive literature and sales ads of all kinds issued by an insurer or agent for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. prepared sales talks, presentations, and material for use by agents and representations made by agents in accordance with these talks, presentations, and materials;

4. statements, written or oral, by an agent.

B. Agent, agents, or agencies. "Agent," "agents," or "agencies" includes insurance agents and agencies licensed pursuant to Minnesota Statutes, section 60A.17, insurance agencies, and designated representatives of these agents or agencies.

C. Exception. "Exception" includes any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of risk not assumed under the policy.

D. Insurer. "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyd's, fraternal benefits society, self-insurer, surplus line insurer, pooled or joint self-insurance group, or self-insurance administrator, nonprofit service plan, and any other legal entity engaged in the advertisement of a policy. An insurer includes an affiliated of a group of insurers under common management and control.

E. Limitation. "Limitation" means any provision which restricts coverage under the policy other than an exception or a reduction.

F. Policy. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement, binder, or other evidence of coverage which provides insurance or self-insurance, whether on an indemnity, reimbursement, service, or prepaid basis. "Policy" includes any subscriber contract issuing coverage under a self-insurance plan, annuity, group self-insurance, or pooled or joint self-insurance employee plan.

G. Reduction. "Reduction" includes any provision which reduces the amount of a benefit; a risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction not been used.

H. Self-insurer. "Self-insurer" includes any entity authorized pursuant to Minnesota Statutes, sections 65B.48 and 176.181, Minnesota Statutes, chapter 62H, Laws of Minnesota 1983, chapter 290, section 171, or Minnesota Statutes, section 471.981 and includes any entity which, for compensation employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by Minnesota Statutes, section 60A.23, subdivision 8.

I. Similar policies. "Similar policies" include policies which provide similar benefits even though there may be differences in benefit amounts, elimination periods, renewal terms, or ancillary benefits.

4 MCAR § 1.9424 Suitability of policies.

In recommending the purchase of any life, endowment, annuity, life-endowment, or medical supplment insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to: the customer's income; the

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customer's need for insurance; and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

4 MCAR § 1.9425 Deceptive words, phrases, or illustrations.

A. General prohibition. No advertisement or representation, written or oral, may omit information or use words, phrases, statements, references, or illustrations if the omission of the information or use of the 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 policy benefit payable, loss covered, or premium payable. 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.

B. Coverage terms. No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help pay your hospital and surgical bills," "this policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income," when used to express loss time benefits or similar words and phrases, in a deceptive or misleading manner so as to exaggerate any benefits beyond the terms of the policy.

C. Statements regarding tax benefits. An advertisement must not state a policy's benefits are tax free unless an explanation of the rules applicable to the taxation of these types of policy benefits are clearly shown with equal prominence and in close conjunction with the statement. An advertisement of a benefit for which payment is conditioned upon confinement in a hospital or similar facility must not state that the benefit is tax free.

D. Benefit terms. An advertisement may not use the expressions "extra cash," "cash income," "income," "cash," or similar words or phrases in such a way as to imply that the insured will receive benefits in excess of the expenses incurred while being sick, injured, or hospitalized.

E. Payment terms. The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium, or use other similar language.

F. Dividends. Dividends are a return of premium and it is misleading and deceptive to refer to them as being tax free, or to use words of similar import, unless they are used within an instructive context and the nature of dividend as a return of premium is clearly indicated.

G. Dread disease policies. A policy covering only one disease or a list of specified diseases must not be advertised so as to imply coverage beyond the terms of the policy. A particular disease shall not be referred to in more than one term so as to imply broader coverage than is the fact.

H. Policy limitations. The benefits of a policy which pays varying amounts for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, must not be advertised without disclosing the limitations or reductions under which the benefits referred to are provided by the policy.

I. Maximum benefits. The maximum benefit available under a policy must not be emphasized in a manner which exaggerates its relationship to any internal limits or other conditions of the policy. Phrases such as "this policy pays $1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

J. Aggregate benefits. The aggregate amounts or the monthly or weekly benefits payable under coverage such as hospital or similar facility confinement indemnity or private duty nursing must not be emphasized unless the actual amounts payable per day are disclosed with substantially equal prominence and in close conjunction with the statement. Any limitation or reduction in the policy and the number of days of coverage provided must be disclosed.

K. False statements regarding coverage. An advertisement must not state or imply that each member under a family policy is covered as to the maximum benefits advertised when such is not the case.

L. Exaggeration of certain diseases. The importance of diseases rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

M. Benefit examples. Examples of what benefits may be paid under a policy must be shown only for losses from common illnesses or injuries rather than exceptional or rare illnesses or injuries.

N. Benefit clarification. When a range of hospital room expense benefits is set forth in an advertisement, it must be made clear that the insured will receive only the benefit indicated in the policy purchased. It must not be implied that the insured may select his room expense benefit at the time of hospitalization.

O. Benefit increases at time of disability. An advertisement must not imply that the amount of benefits payable under a loss of time policy may be increased at time of disability according to the needs of the insured.

P. Misleading payment claims. An advertisement must not state that the insurer "pays hospital, surgical, medical bills," "pays dollars to offset the cost of medical care," "safeguards your standard of living," "pays full coverage," "pays complete coverage," "pays for financial needs," "provides for replacement of your lost paycheck," "guarantees your paycheck," "guarantees your income," "continues your income," "provides a guaranteed paycheck," "provides a guaranteed income," or "fills the gaps in medicare," or use similar words or phrases unless the statement is literally true.

Q. Premium levels. An advertisement shall not state that premiums will not be changed in the future unless such is the fact.

R. Deductibles. An advertisement which states dollar amounts of benefits payable and premiums must clearly indicate the provisions of any deductible under a policy.

S. Other insurance. If a policy contains any of the following or similar provisions, an advertisement referring to the policy must not state that benefits are payable in addition to other insurance unless the statement contains an appropriate reference to the coverage excepted:

1. an "other insurance" exception, reduction, limitation, or deductible;

2. a "coordination of benefits" or "nonduplication" provision;

3. an "other insurance in this company" provision;

4. an "insurance in another insurer's" provision;

5. a "relation of earnings to insurance" provision;

6. a workers' compensation, employer's liability, occupational disease law, or automobile no-fault exception, reduction, or limitation;

7. a reduction based on social security benefits or other disability benefits; or

8. a medicare exception, reduction, or limitation.

T. Immediate coverage or guaranteed issuance. An advertisement may refer to immediate coverage or guaranteed issuance of a policy only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

U. Premium increases or premium reductions. If an advertisement indicates an initial premium which differs from the renewal premium on the same mode, the renewal premium shall be disclosed with equal prominence and in close conjunction with any statement of the initial premium. Any increase in premium or reduction in coverage because of age shall be clearly disclosed.

V. Pre-existing conditions. An advertisement must not state that the policy contains no waiting period unless pre-existing conditions are covered immediately or unless the effect of pre-existing conditions is disclosed with equal prominence and in close conjunction with the statement.

W. Age limits. An advertisement must not state that no age limit applies to an insured or applicant unless application from applicants of any age are considered in good faith, and the statement clearly indicates the date or age to which the policy may be renewed or that the company may refuse renewal.

X. Health provisions. An advertisement shall not state that no medical, doctor's, or physical examination is required or that no health, medical, or doctor's statements, or questions are required or that the examination, statements, or questions are waived or otherwise state or imply that the applicant's physical condition or medical history will not affect the policy unless:

1. the statement indicates with equal prominence that it applies only to the issuance of the policy or to both the issuance of the policy and the payment of claims; and

2. pre-existing conditions are covered immediately under the policy or the period of time following the effective date of the policy during which pre-existing conditions are not covered is disclosed with equal prominence and in close conjunction with the statement.

Y. Limited accident and health policies. An advertisement of a limited accident and health policy must prominently indicate

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that the policy provides limited coverage with an appropriate statement such as "this is a cancer only policy" or "this is an automobile accident only policy," "this is an accident policy only — this policy does not allow coverage for sickness," "this policy provides dental insurance only."

Z. Exceptions, reductions, or limitations. An advertisement must not set out exceptions, reductions, or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions, or limitations shall fairly and accurately describe their negative features. The words "only," "minimum," "just," "merely," or similar words or phrases must not be used to refer to exceptions, reductions, or limitations.

AA. Misleading cost statements. An advertisement must not state or imply, or use similar words or phrases to the effect that because no insurance agent will call and no commissions will be paid to agents, the policy is a low cost plan, unless literally true.

BB. Awards. Devices such as a safe driver's award and other such awards must not be used in connection with an advertisement, except advertisements for property and casualty insurance.

CC. Applications. An advertisement must not use an application which is deceptively similar to paper currency, bonds, or stock certificates.

DD. Mandated benefits. An advertisement must not exaggerate the effect of statutorily mandated benefits or required policy provisions or imply that these provisions are unique to the advertised policy.

EE. Statements of coverage. An advertisement must state clearly the insurance coverage being offered.

FF. Medicare supplement policies. An advertisement which refers to a policy as being a "medicare supplement" policy must, in addition to the other disclosure requirements required by law, comply with the following requirements:

1. contain a prominent statement indicating which medicare benefits the policy is intended to supplement, for example, hospital benefits; and which medicare benefits the policy will not supplement, for example, nursing home benefits; and must clearly disclose any gaps in medicare coverage for which the policy does not provide benefits;

2. clearly indicate the extent and amount of the benefits if the policy benefits are on an expenses-incurred basis beyond what medicare covers;

3. clearly indicate the classification of the medicare supplement coverage being offered by the policy as defined by Minnesota Statutes, sections 62A.31, 62A.32, 62A.33, 62A.34, and 62A.35;

4. must not imply or state that the policy is in any manner related to the federal medicare program or any other governmental program.

GG. Federal program information. An advertisement which offers to provide information concerning the federal medicare program or any related government program or changes in the program must:

1. include no reference to the program on the envelope, the reply envelope, or on the address side of the reply postal card, if any;

2. include on any page containing a reference to the program an equally prominent statement to the effect that in providing supplemental coverage the insurer and agent involved in the solicitation are not in any manner connected with the program;

3. contain a statement that it is an advertisement for insurance or is intended to obtain insurance prospects;

4. prominently identify the insurer or insurers which will issue the coverage; and

5. prominently state that any material or information offered will be delivered in person by a representative of the insurer, if that is the case.

4 MCAR § 1.9426 Exceptions, reductions, and limitations.

A. Disclosure. When an advertisement for health or accident insurance refers to any dollar amount of benefits payable, period of time for which any benefit is payable, cost of a policy, specific policy benefit, or the loss for which the benefit is payable, it must also disclose those exceptions, reductions, and limitations, including waiting, elimination, probationary, or similar periods, and pre-existing condition exceptions, affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

B. Pre-existing conditions summary. If the policy advertised does not provide immediate coverage for pre-existing conditions, an application or enrollment form contained in or included with an advertisement to be completed by the applicant and returned to the insurer must contain a question or statement immediately preceding the applicant's signature line which summarizes the pre-existing condition provisions of the policy.

C. Pre-existing conditions disclosure. An advertisement must in negative terms disclose the extent to which any loss is not covered if the cause of the loss is a condition which exists prior to the effective date of the policy. The expression "pre-existing conditions" shall not be used unless appropriately defined.

D. Medical exam disclosure. If a medical examination is required for a policy, an advertisement for that policy must disclose this requirement.

4 MCAR § 1.9427 Renewability, cancelability, and termination.

An advertisement which refers to renewability, cancelability, or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, must disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which would not have the capacity or tendency to mislead, deceive, minimize, or render obscure the qualifying conditions. An advertisement of a group or blanket policy which would otherwise be subject to the disclosure requirements of this rule need not disclose the policy's provisions relating to renewability, cancelability, and termination. The advertisement must provide, however, as a minimum, that an insured's coverage is contingent upon his or her continued membership in the group and the continuation of the plan.

4 MCAR § 1.9428 Identity.

A. Disclosure. The identity of the insurer, agents, or agency must be made clear in all advertisements or representations, whether written or oral.

B. Names. An advertisement or representation, whether written or oral, must not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol, or any other device which has the capacity or tendency to mislead or deceive as to the identity of the insurer, agents, or agency.

C. Connection with a government agency. An advertisement or representation, whether written or oral, must not use any combination of words, symbols, or materials which, by its content, phraseology, shape, color, nature, or other characteristics, is so similar to combinations of words, symbols, or materials used by federal, state, or local government agencies that it tends to confuse or mislead prospective buyers into believing that the solicitation is in some manner connected with the government agency.

4 MCAR § 1.9429 Testimonials, endorsements, or commendations by third parties.

A. Disclosure of interests. If a person, group, or association making a testimonial, endorsement, or a commendatory statement concerning the insurer has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, the facts must be disclosed in the advertisement or representation, whether written or oral. If the person, organization, or association is compensated for making a testimonial, endorsement, or commendatory statement, the facts must be disclosed in the advertisement or representation, whether written or oral, by language fully disclosing that compensation was paid. This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for the "scale" for television or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment," for filming or recording of television or radio advertisements remove the filming and recording from the category of an unsolicited testimonial and require disclosure of the compensation.

B. Approvals or endorsements. An advertisement or representation, whether written or oral, must not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organizations, unless that is the fact, and only if any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or by a person or persons who are in control of the insurer, the facts must be disclosed in the advertisement.

C. Genuineness. A testimonial, endorsement, or commendatory statement used in an advertisement or representation, whether written or oral, must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

D. General restrictions. An insurer, agent, or agency shall not use a testimonial, endorsement, or commendatory statement in any advertisement or representation, whether written or oral:

1. which is fictional;

2. where the insurer, agent, or agency has some information indicating a substantial change of view on the part of the author;

3. where more than two years have elapsed from the date of the testimonial or the last confirmation of the statement without obtaining a confirmation that the statement represents the author's current opinion;

4. which does not accurately reflect the present practice of the insurer, agent, or agency;

5. which refers to a policy other than the one for which such statement was given, unless the statement clearly has some reasonable application to the other policy;

6. in which a change or omission has been effected which alters or distorts its meaning or intent as originally written; or

7. if it contains a description of benefit payments which does not disclose the true nature of the insurance coverage under which the benefits were paid.

4 MCAR § 1.9430 Jurisdictional licensing.

A. Misrepresentation. An advertisement which may be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed must not imply licensing beyond those limits.

B. Disclosure. Advertisements by direct mail insurers must indicate that the insurer is licensed in a specified state or states, or is not licensed in a specified state or states, by use of some language such as "This company is licensed in state A" or "This company is not licensed in state B."

4 MCAR § 1.9431 Approval by government agency.

A. Misleading advertisements. An advertisement or representation, whether written or oral, must not state or imply, or otherwise create the impression directly or indirectly, that the insurer, its financial condition or status, the payment of its claims, its policy forms or the merits or desirability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any agency of this state or the federal government, unless that is the fact.

B. Licensing as endorsement disclaimed. In any advertisement or representation, whether written or oral, any reference to licensing must contain an appropriate disclaimer that the reference is not to be construed as an endorsement or implied endorsement of the insurer, agent, or agencies by the Department of Commerce or any other agency of this state.

C. Reproduction of report of examination prohibited. No advertisement or representation, whether written or oral, may reproduce any portion of a Department of Commerce report of examination.

4 MCAR § 1.9432 Introductory, initial, or special offers in limited enrollment periods.

A. Regulation. An advertisement or representation, whether written or oral, must not state or imply that a policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages not available at a later date by accepting the offer, that only a limited number of policies will be sold, that a time is fixed for the discontinuance of the sale of the policy advertised because of special advantages available in the policies, or that an applicant will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless that is fact.

B. Disclosure of enrollment period. A written advertisement shall not state or imply that enrollment under a policy is limited to a specific period unless the period of time permitted to enroll is disclosed.

C. Disclosure of similar offers. If the insurer making a special offer has previously offered the same or similar policy on the same basis or intends to repeat the current offer for the same or similar policy, the advertisement or representation, whether written or oral, must so indicate.

D. Limits of timing of enrollment periods. An insurer must not establish for residents of this state a limited enrollment period within which an individual policy or certificate may be purchased less than six months after the close of an earlier limited enrollment period for the same or similar policy or certificate. This restriction also applies to all advertisements or representations, whether written or oral, soliciting enrollment under mass marketed or direct response solicitations for life or health insurance coverage.

4 MCAR § 1.9433 Group, quasi-group, or special class implications.

An advertisement or representation, whether written or oral, must not state or imply that prospective policyholders or members of a particular class of individuals become group or quasi-group members or are uniquely eligible for a special policy or coverage and as such will be subject to special rates or underwriting privileges or that a particular segment of people, or a particular age group or groups, unless that is the fact.

4 MCAR § 1.9434 Identification of plan or numbers of policies.

A. Benefits to depend on plan selected. When an advertisement or representation, whether written or oral, refers to a choice regarding benefit amounts, it must disclose that the benefit amounts provided will depend upon the plan selected and that the premium will vary with the amount of the benefits.

B. Benefits requiring combination of policies. When an advertisement refers to various benefits which may be contained in two or more policies, other than group policies, it must disclose that the benefits are provided only through a combination of the policies.

4 MCAR § 1.9435 Use of statistics.

A. Relevant facts. An advertisement or representation, whether written or oral, relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy must not be used unless it accurately reflects all of the relevant facts. Irrelevant statistical data shall not be used. The sources of all statistical information must be disclosed in the advertisement or representation.

B. Applicable statistics. An advertisement or representation, whether written or oral, must not imply that any statistics used are derived from the policy advertised unless those statistics are derived from the policy.

4 MCAR § 1.9436 Inspection of the policy.

A. Effect. An offer in an advertisement or representation, whether written or oral, of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in the advertisement or representation.

B. Return disclosure. An advertisement or representation, whether written or oral, which refers to the provision in the policy advertised or represented regarding the right to return the policy must disclose the time limitation applicable to this right.

4 MCAR § 1.9437 Disparaging comparisons and statements.

An advertisement must not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparage, discredit, or criticize competitors, their policies, services, or business methods or competing marketing methods.

4 MCAR § 1.9438 Statement about an insurer.

An advertisement must not contain statements which are untrue in fact or by implication misleading with respect to the insurer's asssets, corporate structure, financial standing, age, experience, or relative position in the insurance business.

4 MCAR § 1.9439 Service facilities.

An advertisement or representation, whether written or oral, must not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy, or contain a description of a claim which involves unique or highly unusual circumstances.

4 MCAR § 1.9440 Insurer's advertising file.

A. Retention of copies. Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, or group policies hereafter disseminated in this or any other state whether or not licensed in the other state. A notation must be attached to each advertisement in the file indicating the manner and extent of distribution and the form number of any policy, amendment, rider, or endorsement form advertised. The company must be able to identify and provide a copy of the policy advertised, together with any amendment, rider, or endorsement applicable thereto. All advertisements must be maintained for a period of not less than three years. The file is subject to regular and periodic inspection by the Department of Commerce.

B. Affidavit with annual statement. Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of 4 MCAR §§ 1.9420-1.9442 must file with the Department of Commerce together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of their knowledge, information, and belief, that 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 the insurance laws of this state as implemented and interpreted by these rules.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

4 MCAR § 1.9441 Responsibility of insurer, agent, or agency.

A. System of control required. Every insurer, agent, or agency shall establish and at all times maintain a system of control over the content, form, and method of advertisements and representations, oral and written, concerning its policies. All advertisements and represntations, whether written or oral, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer whose policies are so advertised or represented.

B. Prior approval by insurer. An insurer shall require its agents or agencies and any other person or agency preparing advertisements naming the insurer or its products to submit proposed advertisements to it for approval prior to use.

4 MCAR § 1.9442 Penalty.

Violations of 4 MCAR §§ 1.9420-1.9441 subject the violator to the penalties described in Minnesota Statutes, chapters 60A and 62A.

Pollution Control Agency
Solid and Hazardous Waste Division

Proposed Amendments to Rules Governing the Management of Hazardous Waste (6 MCAR §§ 4.9001-4.9005 and 4.9008-4.9010 to be Renumbered as 6 MCAR §§ 4.9100-4.9560)

Notice of Hearing

The Minnesota Pollution Control Agency (Agency) issued two notices, both entitled "Notice of Intent to Amend Rules Without A Public Hearing", concerning the above-entitled rule amendments. State Register, Volume 8, Number 17, pages 732 and 811 (October 24, 1983). The proposed amendments were divided into two sets:

(1) proposed amendments to the rules governing generators of hazardous waste, the identification, transportation and management of hazardous waste, and county hazardous waste programs, 6 MCAR § 4.9001-4.9003, 4.9008-4.9010, renumbered as 6 MCAR § 4.9100-4.9259 and 4.9559-4.9560, published at 8 S.R. 732 (October 24, 1983) as corrected in the Errata published at 8 S.R. 1086 (November 7, 1983) and 8 S.R. 1238, (November 21, 1983); and,

(2) proposed amendments to the rules governing hazardous waste treatment, storage and disposal facilities, 6 MCAR § 4.9004, renumbered as 6 MCAR §§ 4.9280-4.9481, published at 8 S.R. 811 (October 24, 1983) as corrrected in the Errata published at 8 S.R. 1084 (November 7, 1983) and 8 S.R. 1238 (November 21, 1983).

The Notice provided that if, during the comment period, seven or more persons requested that the Agency conduct a public hearing, the Agency would conduct a hearing. During the comment period on the two sets of hazardous waste rules described above, the Agency received more than seven requests for public hearing. Therefore, the Agency has scheduled a combined public hearing on both sets of proposals as described below.

Please take notice, therefore, that a public hearing concerning the proposed amendments to the rules governing the management of hazardous waste will be held in the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, on Monday, February 6, 1984, commencing at 10:00 a.m. and continuing on subsequent days at the same location until all interested persons have had an opportunity to be heard. An evening session will be held on Wednesday, February 8, 1984, at 7:00 p.m. at the same location.

The hearing will be conducted by Mr. Allan W. Klein, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7609, a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota.

Please also note, that during the comment period following publication of the Notice of Intent to Amend Rules Without a Public Hearing, the Agency received numerous comments on both sets of proposed amendments. On December 20, 1983, at its Board meeting, the Agency revised its proposed amendments to incorporate some of the changes suggested by the comments and to make other clarifying, grammatical or technical changes. The following rules, or portions thereof were amended as published below: 6 MCAR §§ 4.9100 SSS. and FFFF., 4.9102 H. 4.9104 B.1., 4.9128 B.6.c. and C.9. and 15., 4.9129 B.1. and 2., 4.9132 D.1. and F.4., 4.9134 E., 4.9215 A. and B., 4.9216 A.1. and 5., 4.9217 B., 4.9254, 4.9255 A., 4.9289 F., 4.9296 C., and C.7., 4.9297 A.1., K.7. and L.7., 4.9302, 4.9307 D., 4.9308 A.12., D.10., and E.6., 4.9310 A.2., B.9. and F.4., 4.9314 A.1., 4.9317 C.3. and E.4., 4.9318 A., 4.9321 D.1., 4.9389 F., 4.9396 C. and C.7., 4.9401 C., 4.9403, 4.9409 A.4., 4.9411 E.8. and 4.9560 B.2. and 3. Spelling errors and an erroneous cross-reference were corrected in Exhibits 6 MCAR §§ 4.9132 G.3. -1., 4.9134 C.2., D.5.-3. and D.6.-4., 4.9137-1, 4.9297 F.2.-1. and 4.9314 F.7. A copy of these revisions may be obtained by

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is February 14, 1984.

METROPOLITAN COUNCIL has 1 vacancy open immediately for a public member, (must be a resident of council district 11). The council coordinates planning and development of the 7 county Twin Cities metropolitan area; establishes a long range development plan containing regional plans for aging, the arts, aviation, health, housing, law and justice, parks and open space, solid waste, transportation, wastewater management and water resources; reviews the long range plans for local governments, and can require them to be consistent with the regional plans. Members are appointed by the Governor and confirmed by the Senate. Each council member shall reside in the council district he represents; members serve staggered four-year terms; must file with EPB. Meetings twice a month, Metro Square Bldg., St. Paul; members receive $50 per diem plus expenses. For specific information contact the Metropolitan Council, 300 Metro Square Bldg., St. Paul 55101; (612) 291-6359.

BOARD FOR COMMUNITY COLLEGES has 1 vacancy open immediately for a member (must be a resident of the 1st Congressional District). The board sets rules and policies for management for community college system. Members are appointed by the Governor and confirmed by the Senate. Must file with EPB. Monthly meetings alternate between St. Paul and various community college campuses. For specific information contact the Board for Community Colleges, 301 Capitol Square Bldg., St. Paul 55101; (612) 296-3356.

SOLID WASTE MANAGEMENT ADVISORY COUNCIL has 1 vacancy open immediately for a representative of local government units. Experience is desirable but not required in the following areas: solid waste collection, processing and disposal, and solid waste reduction and resource recovery. The council makes recommendations to the Waste Management Board on its solid waste management activities. Members are appointed for 2 year renewable terms by the chairperson of the Waste Management Board. The current appointment term expires 6/30/84. Meetings twice monthly in the metropolitan area; members are compensated for expenses. For specific information, contact Robert Dunn, Chairman, Waste Management Board, 7323-58th Ave. N., Crystal, MN 55428; (612) 536-0816.

Department of Commerce

Meeting Notice, Minnesota Comprehensive Health Association

Minnesota Comprehensive Health Association
Board of Directors and Nominating Committee
Tuesday, January 17, 1984, at 10:30 a.m.
Moss and Barnett
1200 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402

Changes in any scheduled meetings and notices of any additional meetings will be posted or otherwise be available upon inquiry at the Department of Commerce, Life and Health Section, from John Ingrassia, telephone (612) 296-9434.

Department of Commerce

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Governing Insurance Marketing Standards

The Department of Commerce is soliciting opinion on its insurance marketing standards rules published in the *State Register* on January 2, 1984 at 8 S.R. 1568, pages 1568-1576, as to how these rules will affect small businesses as defined in Minnesota

Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to Insurance Claims Settlement

The Department of Commerce is soliciting opinion on its insurance claims settlement rules published in the *State Register* on January 2, 1984 at 8 S.R. 1562, pages 1562-1567, as to how these rules will affect small businesses as defined in Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Outside Opinion Sought Concerning the Impact on Small Business of the Previously Published Proposed Rules Relating to the Workers' Compensation Assigned Risk Plan

The Department of Commerce is soliciting opinion on its workers' compensation assigned risk plan rules and amendments published in the *State Register* on December 5, 1983 at 8 S.R. 1294, pages 1294-1296, and on December 19, 1983 at 8 S.R. 1418, pages 1418-1419, as to how these rules will affect small businesses as defined in Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Corrections

Notice of Modification of Statement of Need and Reasonableness for Proposed Rules Governing the Operation of the Office of Adult Release

Notice is given that modifications have been made to the Statement of Need and Reasonableness for Proposed Rules of the Operation of the Office of Adult Release. Interested parties can receive a copy of the Statement of Need and Reasonableness by contacting John McLagan, Director, Standards Development Unit, 430 Metro Square Building, St. Paul, Minnesota 55101 (612-296-1312).

The Proposed Rules Governing the Operation of the Office of Adult Release were published at *State Register*, Volume 8, Number 31, page 981 (8 SR 981), dated October 31, 1983.

Orville B. Pung
Commissioner of Corrections

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion as to the Impact on Small Business of the Previously Published Proposed Rules Governing Insurance Marketing Standards

The Department of Commerce is soliciting opinion on its insurance marketing standards rules published in the State Register on January 2, 1984 at 8 S.R. 1568, pages 1568 - 1576, as to how these rules will affect small businesses as defined in Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subdivision 1. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101, (612) 297-2852.

All statements of information and comment shall be accepted until February 22, 1984. Any written material received by the Commerce Department shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Requests for Statement of Need

Kay Dunn
Moss + Barnett
1200 Pillsbury Center
Minneapolis, MN 55402

FIREMAN'S FUND INSURANCE COMPANIES
1600 Los Gamos Road, San Rafael, California 94911

RICHARD E. BEX
Assistant Vice President
& Assistant General Counsel

FEB 6 1984

January 30, 1984

The Honorable Michael A. Hatch
Commissioner of Insurance
State of Minnesota
500 Metro Square Building
St. Paul, Minnesota 55101

ATTN: Ms. Debbi Lindlief

RE : PROPOSED ADOPTION OF RULES -
INSURANCE MARKETING STANDARDS

Dear Ms. Lindlief:

In accordance with the recent announcement by your Department published in the State Register of Monday, January 2nd, in behalf of Fireman's Fund American Life Insurance Company I respectfully request a copy of the "Statement Of Need And Reasonableness Describing The Need For And Reasonableness Of Each Provision And Identifying The Data And Information Relied Upon To Support The Proposed Rules".

Very truly yours,

Richard E. Bex

Richard E. Bex

REB:ata

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the
Proposed Adoption of
Rules Relating to
Trade Conduct-Marketing
Standards.

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled rules were proposed to be adopted without a public hearing on January 2, 1984, after proper notice of intent to adopt these rules as required by Minn. Stat. § 14.22 was served upon all groups registered with the Department of Commerce for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony and considered all of the evidence adduced upon the records, files and proceedings herein, I find the following:

FINDINGS OF FACT

deleted p.4

1. Published rule 4 MCAR § 1.9424 (suitability of policies) duplicates exactly another proposed rule which is currently being promulgated. See, 4 MCAR § 1.9019, attached hereto as Exhibit A.

2. Parties submitting comments to the above-entitled rules have suggested that a rule relating to "suitability" is improper as applied to an insurance company, rather than an insurance agent, and would in any case be inappropriate in a set of rules designed to govern advertising of insurance companies.

See, letter of September 16, 1983, from Ralph J. Marlatt, President, Minnesota Insurance Federation; and letter of January 30, 1984, from David F. Dierenfeldt, Associate General Counsel, IDS Life Insurance Company. Copies of the letters are attached hereto as Exhibits B-1 and B-2.

3. Published rule 4 MCAR § 1.9425 B. omitted the word "of" after the word "loss," through a typographical error.

4. Published rule 4 MCAR § 1.9433 was obviously missing a phrase necessary to make the rule grammatically correct and complete on its face. The rule, which deals with advertisement of special class and special risk policies, will be made grammatically complete in accordance with the original intent of the rule, by insertion of the phrase "a particular coverage or policy is exclusively for preferred risk," after the phrase "underwriting privileges or that . . . ."

5. The words proposed to be inserted, as set forth in paragraph 4, above, were contained in discussion drafts of the proposed rules circulated among the industry without objection, and were inadvertently omitted from the proposed rules as published.

Based upon the foregoing Findings of Fact, the Commissioner makes the following

CONCLUSIONS

1. That published proposed rule 4 MCAR § 1.9424, relating to suitability of policies, is duplicative and should be deleted from the proposed rules.

2. That published proposed rules 4 MCAR §§ 1.9425-1.9442 be renumbered to reflect deletion of proposed published rule

4 MCAR § 1.9424.

3. That the word "of" be inserted after the word "loss" in proposed rule 4 MCAR § 1.9424 B.

4. That the words "coverage or policy is exclusively for preferred risk," be inserted after the words "or underwriting privileges or that" in proposed 4 MCAR § 1.9432.

5. That the changes to the proposed rules do not adversely affect the public, add to or subtract from the regulatory authority of the Commissioner or the substantive meaning of the rules.

Dated:

MICHAEL A. HATCH
Commissioner of Commerce

500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-6848

CPCU
THE SOCIETY OF CHARTERED PROPERTY & CASUALTY UNDERWRITERS

CHAPTERGRAM
M-I-N-N-E-S-O-T-A

Minnesota Chapter,
Society of CPCU
7101 York Avenue So.,
Edina, MN 55435

August 22, 1983

Mr. Dale L. McDonnell
500 Metro Square Building
St. Paul, MN 55101

State of Minnesota
AUG 24 1983
Department of Commerce

Gentlemen:

We have received copies of the proposed draft of rules concerning insurance trade conduct. Thank you for including the Minnesota Chapter of the Society of CPCU in your request for contributions.

At the risk of redundance, The Society of CPCU conducts all its operations under the highest standards of professional conduct; for the sake of brevity and dispatch, a copy of our oath together with a description of our Society has been attached.

A committee formed by our Educational Department has taken the opportunity to review and discuss the proposed changes and additions. We have found the draft excellent in content and scope and do not feel we would have need to make any significant alterations or amendments to the instrument. We are of the opinion the entire document subscribes to the ideals we are dedicated to maintain and for this reason offer our endorsement and support for the proposal.

We will appreciate being kept up-to-date on developments concerning this draft of rules changes. Thank you again for calling on us.

Very truly yours,

Stephen I. Levitus
President

SIL/dlm

STATE OF MINNESOTA
SEP 9 1983
DEPARTMENT OF COMMERCE

ALLSTATE INSURANCE COMPANY
ALLSTATE PLAZA-E5
NORTHBROOK, ILLINOIS 60062

RICHARD B. LEVENFELD
ASSOCIATE COUNSEL

312 291-7044

September 6, 1983

Mr. Dale L. McDonnell
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Comments Concerning Part I, Marketing Standards

Dear Mr. McDonnell:

Pursuant to our recent telephone conversation, it is now our understanding that Allstate may provide written comments to the above mentioned proposed rules by September 16, 1983. We certainly appreciate your kind consideration in providing this extension.

Very truly yours,

Richard Levenfeld

Richard B. Levenfeld

RBL/gsm

CPCU
THE SOCIETY OF CHARTERED PROPERTY & CASUALTY UNDERWRITERS

M-I-N-N-E-S-O-T-A

Russel W. Hanson, CPCU, APA, ARM
Director of Education

September 8, 1983

STATE OF MINNESOTA
SEP 23 1983
DEPARTMENT OF COMMERCE

State of Minnesota
Department of Commerce
500 Metro Building
Saint Paul, MN 55101

Attention: Dale L. McDonnell

Gentlemen:

Thank you, again, for including the Minnesota Chapter, Society of CPCU in requesting input for your proposed changes in the Minnesota law pertaining to insurance marketing practices.

We are also in complete agreement with the proposed terms of this draft and wish to assure you of our compliance and support of the finished product as we tendered in our replies to Parts I and II.

Inasmuch as this portion of the draft pertains primarily to the Accident and Health/Life Insurance industry, we felt more reticent in offering changes in the wording of this draft. This does not alter our belief, however, that the intent of your committee is to improve the ethical behavior of all segments of the industry. This proposal certainly will be in that direction.

We hope we have helped in this endeavor; you can be sure we feel we have been made a part of the program and wish you complete success.

Very truly yours,

Stephen I. Levitus

Stephen I. Levitus, President
Minnesota Chapter, CPCU

SL/rs

Yorktown Executive Suite, 7101 York Av. So., Edina, MN 55435 (612) 921-3328

JCPenney Insurance

A JCPenney Financial Service

Murray M. McColloch
Senior Vice President,
Secretary and Counsel

8:30 am
SEP 12 1983
...tment of Commerce

September 8, 1983

Mr. Dale L. McDonnell
State of Minnesota
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Trade Conduct Rules,
Part I: Marketing Standards

Dear Mr. McConnell:

The J. C. Penney Life Insurance Company is engaged in the writing of life insurance on a direct response basis in the State of Minnesota.

These comments are in response to the Department's notice of intent to publish the rules regarding marketing standards for insurance products. The J. C. Penney Life Insurance Company supports, in principle, the Department of Commerce in its efforts to promulgate trade conduct rules. However, the present draft of the rules apparently covers all types of insurance. It appears that a large portion of the proposed rules are intended to address problems which arise in accident and health advertisements and solicitations. However, the scope of the rules is broad enough to cover life insurance advertisements, as well as those for accident and health.

It is our opinion that the differences in accident and health insurance and life insurance require that regulations treat them accordingly. We feel that a separate set of rules, limited in scope to regulate accident and health insurance advertisements, is desirable. A separate set of rules addressing life insurance advertising would also be needed. We feel that our suggested approach would result in rules with a greater degree of clarity.

It is the recommendation of the J. C. Penney Life Insurance Company that the Minnesota Department of Commerce adopt the current Model N.A.I.C. Life Insurance Advertising Rules and the current Model N.A.I.C. Accident and Health Insurance Advertising Rules. The adoption of these two separate sets of advertising rules will promote uniformity in regulation across the country. For an insurance company engaging in the marketing of insurance through direct response methods, uniformity of regulation generally results in lower administrative costs which can benefit the consumers of Minnesota, as well as the company.

After years of development by the N.A.I.C., the model advertising rules appear to have worked very well in the states that have adopted them. Unless there are compelling reasons to vary from the model rules in Minnesota, we believe that the Department of Commerce should adopt the current N.A.I.C. Model Advertising Regulations.

In the event that the Department choses to adopt one set of regulations, we believe that Section IX B should be rewritten, as it is very broad and vague due to the fact that the standard of violation seems to be "the capacity or tendency to mislead or deceive." This type of rule is very difficult to interpret and is always subject to interpretation. We suggest that the section should be rewritten as follows:

> "The name of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, an 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 or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy."

In summary, J. C. Penney Life Insurance Company recommends that the Minnesota Department of Commerce adopt the current Model N.A.I.C. Accident and Health Insurance Advertising Regulation and the current Model N.A.I.C. Life Insurance Advertising Regulation, and that Section IX B of the proposed Trade Conduct Rules, Part I be rewritten as stated above. Your consideration of these suggestions will be appreciated.

Sincerely,

Murray M. McColloch
Senior Vice President,
Secretary and Counsel

MMMcC/mkg/59

(bcc: Bob De Michealis
Carol Calloway)

Alliance of American Insurers
1501 Woodfield Road, Suite 400 West
Schaumburg, Illinois 60195-4980
312·490·8500

September 12, 1983

10:09 a.m.
SEP 13 1983
Department of Commerce

Honorable Michael A. Hatch
Commissioner of Commerce
Division of Insurance
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Attention: Dale L. Mc Donnell

Dear Mr. Mc Donnell:

Unfair Trade Practices - Marketing Standards Proposed Regulation

The Alliance of American Insurers is a national trade association of more than 130 property and casualty insurers, many of which are licensed in the state of Minnesota. As such we are most interested in the proposed marketing standards regulations. We ask that you give serious consideration to the following comments:

II. Applicability

We note that most of the rules found in this proposed regulation are really much more applicable to accident and health insurance, rather than property and casualty insurance. Yet, this proposed regulation does not attempt to recognize such a distinction. It makes these rules applicable to property and casualty insurance as well. We strongly recommend that property and casualty insurance advertising be excluded from this regulation, if the intent of the department is to control deceptive accident and health marketing policies. On the other hand, if the intent is to also regulate property and casualty advertising and marketing, we submit that a separate regulation or section of this regulation should be written specifically for the property and casualty insurance industry. We believe this would eliminate any unintended or incidental application of the rules to property and casualty insurance. While it may be easier to draft a regulation that does not discriminate among the various lines of insurance, it should also be recognized that such a "broad brush" approach will cause other industry segments a great deal of expense and frustration though the perceived abuse being corrected was not occurring in that segment of the industry. In other words, we respectfully submit that regulation is best suited to correct actual or even perceived problems, rather than attempting "to fix that which

10:09 A.M.
SEP 13 1983
Department of Commerce

is not broken". Because of the more complex nature of the property and casualty business, we are very much concerned that many very reputable property and casualty insurance companies will find it very difficult to comply with this proposed regulation as currently drafted.

We also note that these rules would apply to even oral "advertisements". Since this intent is furthered in the definition of "advertisement," which also includes the oral statements made by an agent, we are very much concerned at to what might be construed as an oral advertisement. A comment on the golf course, a speech at the local Rotary Club, or even simply trying to respond to a question before such a group?

Overall, we found this entire regulation to be rather vague, subjective, and sometimes repetitious. Its scope appears to be broad enough to include virtually any marketing activity by an insurance agent or company, yet the rules are not specific enough to determine a concise determination of what is or is not permissible. We respectfully submit that the entire regulation should be rewritten in a more concise and objective manner. We are very much concerned the scope of this regulation is so broad that the Commerce Department would have to be prepared to make a determination on what is permissible and grant specific approvals to marketing and advertising programs upon request. We also submit the specific provisions of such a regulation ought to address actual abuses that have been documented by the Commerce Department. Perhaps, it would be helpful if the Commerce Department established an advisory committee of insurers to discuss this proposed regulation with the objective of providing specific provisions addressing equally specific abuses.

We note the stated policy of the Department of Commerce in interpreting these rules will be to take into consideration whether the advertisement is the direct or principal sales inducement or whether its function is simply to invite inquiries for details. Once stated, however, there is no indication of what the department intends to do with such a determination. None of the rules apply only if the "advertisement" is the direct or principal sales inducement, rather than a mere inquiry.

III. Definitions

A. Advertisement. The inclusion of "statments, written or oral, by an agent" in the definition of an advertisement brings into the regulation a whole range of activities over which companies have little or no direct control. Independent agency companies have neither the authority or capability to control marketing practices of their agency representatives. We believe it is unrealistic and unfair to charge companies with the responsibilities for matters for which they are contractually precluded from control. In the case of direct agents of a company, we also submit that it would be unfair to penalize an

insurer over the statements, especially those oral, by its agents. If an agent has misrepresented a policy, then that agent ought to be disciplined either by his principal company or even the Commerce Department. However, in the absence of knowledge by the insurer, we believe it would be unfair to penalize the insurer. We also foresee the potential for a great deal of abuse by attorneys and their clients in alleging that certain oral statements were made, thus forcing insurers to defend themselves not only in courts of law but before the Commerce Department. We request that Item 4 under the definition of advertisement be deleted.

V. Suitability of Policies

While we certainly recognize that a good agent will suggest coverages in line with the reasonable needs of the customer and his ability to purchase such insurance, we believe that the provisions found in this section will force agents to obtain very detailed and personal information about their potential clients, to avoid being criticized after the fact that they did not have reasonable grounds for their recommendation. This regulation could force an invasion of privacy against many consumers which we are sure was not the intent. The regulation assumes a customer will fully disclose the customer's insurance program, which will not always be the case. Without full disclosure, an insurer will technically violate this regulation.

VI. Deceptive Words, Phrases, or Illustrations

A. This provision prohibits the omission of information if the omission "has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable." This has the effect of requiring a full description of the insurance contract in each advertisement or representation. Is a full description of a written contract even possible in any advertising?

E. This rule prohibits the use of words like "free," "no cost," "without cost," and "no additional cost" from use with respect to any benefit or service being made available with the policy. However, other language is allowed including that "the charge is included in the premium, or other similar language." It would appear that almost every "other similar language" has been prohibited above. This rule does not appear to recognize that many changes in coverage are made at no increased cost, including changes that are required by statute. If this rule is trying to prohibit an insurer, which is being required to change a particular coverage at no cost by statute, from getting any good will from such change, then it should be so stated. The language in this specific rule appears to go much further than this.

R. This rule provides an advertisement shall clearly indicate the provisions of any deductible along with explaining coverage. We believe this could lead to very lengthy advertisements when explaining general liability or commercial auto coverages. Again, this rule is an example, like many others in this section of the fact that these rules ought to specifically address the line of insurance where the abuse to be corrected is occurring.

Y. Unlike many of the other rules in this section, this rule at least has the appearance of applying to limited accident and health policies. However, it is unclear whether the enforcement of this rule will also be directed at automobile liability and no-fault coverages.

Z. This rule provides that words and phrases used to disclose exceptions, reductions, or limitations shall thoroughly and accurately describe their negative features. The words "only", "minimum," "just," or "merely," or similar words or phrases shall not be used to refer to exceptions, reductions, or limitations. We are concerned with the prohibition of the word "just". Certainly, the Department is not suggesting that insurers cannot advertise they will pay just claims and will not pay unjust claims.

bb This rule prohibits the use of safe driver's awards and other such awards in connection with advertisements. Again, we do not see the abuse the Department is attempting to correct. We believe safe driver's awards are an appropriate matter to advertise.

ee This rule prohibits an advertisement from employing devices which are designed to create "undue fear or anxiety" at those to whom they are directed. While we certainly don't want to cause an undue fear on the part of anyone, we find that such a regulation could conceivably neutralize any insurance advertisement. The very principle of insurance is based upon a concern that some form of tragedy will occur and the money from insurance would be helpful in meeting such tragedy. While some advertisements may portray this concern in bad taste, how is one really to determine whether this particular rule is violated? Regretfully, it resembles the famous quotation from a U. S. Supreme Court Justice who defined obscenity as "I know it when I see it".

VII. Exceptions, Reductions, and Limitations

We question whether the advertising of the typical and reputable property and casualty insurance company can meet the requirement that "when an advertisement refers to any dollar amount of benefits payable. . . it shall also disclose those exceptions. . . affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to deceive and mislead." With the number of exceptions in the normal property and casualty policy,

it is difficult to determine those which should be brought to the attention of a prospective purchaser. A number of companies provide statements in their brochures which state: "This presentation is only a short description of the coverages for the purpose of direct comparison to coverages offered by other companies. Complete terms, conditions and exclusions can be stated exactly only in the contract." Is the Department really proposing that every exclusion in the policy must word for word be provided in the advertisements?

IX. Identity

This rule provides an advertisement or representation, whether written or oral, shall not use a trade name, an insurance group designation, the name of the parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, etc. which has the capacity to mislead or deceive as to the identity of the insurer, agent or agency. It is unclear whether this rule has already decided the use of an insurance group designation on a policy automatically constitutes a deception as to the identity of the insurer. If so, we especially object to this provision. If the use of such designation is only a factor in deciding whether there is a tendency to mislead or deceive, then we must question on what basis such a determination will be made.

X. Testimonials, Endorsements, or Commendations by Third Parties

D. This rule states in relevant part that an insurer, agent, or agency shall not use a testimonial endorsement or commendatory statement in any advertisement or representation whether written or oral, which is fictional. Was this intended to prevent a paid actor from playing a fictitious role in a commercial where the actor indicates the benefits of the product? If so, this would prohibit a number of commercials currently being made by insurers to advertise their products. Since other companies commonly use this type of commercial, we see no reason why the insurance industry cannot. We submit that subparagraph 1 of paragraph D of this section should be deleted.

XX. Service Facility

This rule provides an advertisement or representation shall not contain a description of a claim which involves unique or highly unusual circumstances. We see no reason for this prohibition. It is often the unusual circumstance that makes such an advertisement all the more important. It is these unusual circumstances that best catch the notice of the consumer as to the need for the insurer's product. We see no reason why this type of advertisement should be prohibited.

XXII. Insurer's Advertising File

We note, this particular rule would require that an insurer not only keep on file the advertisements made in the state of Minnesota but also advertisements made in every other state in the United States. We see no reason for such an extensive requirement. While certainly we recognize the power of the Commerce Department to regulate an insurer's activities within the state of Minnesota, we respectfully submit that the Department does not have the right to determine whether advertisements used in other states conform to this regulation. This is especially true for foreign insurers. We also see no need for the chief executive officer of an insurer to personally approve that such advertisements conform to this regulation.

Sincerely,

David R. Anderson DRA

David R. Anderson
Senior Counsel
Government Affairs Department

DRA:rc/md

ALLSTATE INSURANCE COMPANY
ALLSTATE PLAZA-E5
NORTHBROOK, ILLINOIS 60062

RICHARD B. LEVENFELD
ASSOCIATE COUNSEL

312 291-7044

September 13, 1983

State of Minnesota
SEP 15 1983
Department of Commerce

Mr. Dale L. McDonnell
State of Minnesota
Department of Commerce
500 Metro Square Bldg.
St. Paul, Minnesota 55101

Re: Unfair Trade Practices
Part I: Marketing Standards

Dear Mr. McDonnell:

We have now had the opportunity to review Part I of the Trade Conduct Rules concerning Marketing Standards and appreciate the opportunity to offer our comments. Please note that we are commenting on behalf of Allstate's property and casualty insurance operations and make no comment with respect to those sections which apply to life, health, accident and disability insurance. (We expect that our life and health insurance company will be providing comments on those latter subjects in the near future.) In any event, the following comments are presented in the order in which they appear in Part I: Marketing Standards and not necessarily in order of importance:

1. Section III A 4 - This section defines advertisement to include statements, written or oral, by an agent. The inclusion of any statements made by an agent makes this definitional section unreasonably broad and could thereby cause Part I to be a vehicle for an inconceivable number of departmental complaints. If agents' statements are included, there should at least be a proviso that no violation may occur based on such statements unless statements are made with an intent to deceive. In order to do their job properly, agents must speak conversationally (although truthfully) and often

casually. Agents who attempt to comply with these standards in their conversations with applicants or insureds will soon find that their jobs are all but impossible. In fact, both the agents and the Department will have to deal with a new huge volume of complaints.

2. Section IV B - This section outlaws certain words if used in a manner which exaggerates insurance benefits. Although the intent of the drafter is certainly laudable, we would suggest that the enforcement of this particular rule would be difficult because the standards are so subjective. Further, insurance companies may be, thereby, unreasonably restrained from properly identifying and describing their products. Again, because of the subjective nature of the apparent prohibitions contained in this subsection, it too has the potential for an unlimited number of departmental complaints.

3. Section VI E - This is another subsection which prohibits the use of certain words. However, under this subsection these words are absolutely banned. We suggest that the Department has gone too far in this subsection. For example, Allstate's home replacement guarantee benefit was added to our deluxe homeowners' insurance policy purely at "no extra cost." Further, Allstate and other companies have occasionally added other changes--and plan to do so in the future--in casualty products without adding any additional premium cost to customers. In many instances, these changes are added without changing the price strictly so that we may obtain a competitive advantage over other insurance companies. This seems to be the essence of competition. We strongly urge the Department to delete this subsection so that companies will have the ability to exercise their right to advertise benefit changes utilizing words which are accurate.

4. Section VI H - Again, the Department's intentions in drafting this subsection are

obviously meritorious. However, this subsection would be extremely restrictive for purposes of advertising. The limitations and restrictions which this subsection would require are best left to an insurance policy --not an advertisement. For example, when Allstate advertises its casualty insurance coverages, it often uses general terms such as, "Allstate will pay for your property loss," without explaining precisely under what circumstances we will pay and under what precise circumstances we may not pay. If we had to fully state all of the limitations which attach to advertised coverages, our advertisement would sound more like an insurance policy contract. At the least, there should be no violation of this subsection unless there has been an intent to deceive.

5. Section VI R - This subsection requires that advertisements explaining coverages must clearly indicate the provisions of any deductible which would be applicable. We suggest that this also could be an extremely onerous provision. If literally interpreted, this subsection would mean that every time an insurance company talked about homeowners' coverages or auto collision or comprehensive coverages they would have to go into detail about deductible provisions. This would greatly complicate our ability to advertise these products, particularly in a television format where Allstate has only thirty seconds to deliver a message. Again, as we have stated before in these comments, this kind of section is more applicable to an insurance contract than an advertisement.

6. Section VI Z - This subsection again represents another attempt at outlawing certain words. We respectfully point out that it is a mistake to outlaw certain words <u>per se</u> without paying attention to the context in which they are used. In this case, this subsection outlaws the words "only," "minimum," "just," or "merely" or similar words

if used to refer to exceptions, reductions or limitations. Yet, we know that if used properly, these words provide useful information to people who are looking for the proper insurance product. People who buy insurance are generally mature enough to understand that advertisements often use similar phrases to describe exceptions, reductions or limitations. Again, we believe that the absolute prohibition contained in this subsection is unreasonable.

7. Section VI bb - This subsection prohibits the use of safe drivers awards and other such awards in connection with advertisements. Yet, Allstate and many other automobile insurance companies charge lower rates to people with good driving records based upon our merit rating tables. In fact, Allstate has a campaign for 1984 based on "shaping up your driving record" to get our "shape up rates." A literal reading of this subsection would seem to indicate that we cannot tell people that they may receive lower rates if they are safe drivers. Surely, the Department of Commerce is interested in the fact that insurance companies adjust their rates downward for people who have safe driving records. Further, we would suggest that it makes good public policy to encourage people to drive safely at every opportunity. Thus, this subsection either needs to be deleted or clarified so that devices such as safe driver awards may only be prohibited if they are somehow deceptive or unfair.

8. Section VI cc - This subsection prohibits the use of applications which resemble paper, currency, bonds or stock certificates. We would have no problem with this subsection as long as a proviso was added which states that applications may not be used which are deceptively similar to paper, currency, bonds or stock certificates. Often Allstate and other insurance companies

October 10, 1983
Commissioner Hatch

Part III: Standards for Claim Settlements:

The proposed section VII, regarding standards for claim denial, should add the following paragraph:

G. For Medicare Supplement policies, denying a claim for reimbursement of nursing home expense based on criteria that is not clearly specified in the policy, for any policy issued to the insured after , 1983, the effective date of these rules.

Thank you for your consideration of these suggestions.

Sincerely,

Jean Klein Orsello

Jean Klein Orsello
Legal Services Developer

JKO/pac

Alliance of American Insurers
1501 Woodfield Road, Suite 400 West
Schaumburg, Illinois 60195-4980
312·490·8500

October 10, 1983

Mr. Ralph Marlatt
President
Insurance Federation of Minnesota
131 Pioneer Building
St. Paul, Minnesota 55101

Dear Ralph:

Additional Comments, Marketing Standards Proposed Regulations

This letter will highlight some additional comments which we choose to make regarding the proposed marketing standards regulations. As we discussed on the telephone, the Alliance and its member companies believe that property and casualty insurers should be specifically excepted from these regulations because the thrust of the regulations is to regulate practices of accident, health and life insurers. Please consider this letter as addendum to our September 12th letter to the Honorable Michael Hatch which details our comments and suggestions regarding the regulations.

1. Definitions - Statments by Agents

We would ask that the definition section relating to statements, written or oral, by an agent be removed from the proposal. The inclusion of this definition brings under regulation a whole range of activities over which companies have little or no direct control. Independent agency companies have neither the authority or capability to control marketing practices of their agency representatives. We believe it is unrealistic and unfair to charge companies with the responsibility for matters for which they are contractually precluded from control. If an agent has misrepresented a policy then that agent ought to be disciplined by his principle company or the commerce department. However, in the absence of knowledge by the insurer we believe it would be unfair to penalize the insurer. We foresee the potential for a great deal of abuse by attorneys and their clients in alledging that certain oral statements were made, thus forcing insurers to defend themselves not only in courts of law but before the commerce department.

2. Descriptive Words, Phrases or Illustrations

We believe this eight page section clearly demonstrates the focus of this regulation on the accident, health and life insurers. After reading through again this section, I would suggest that the following lettered paragraphs are aimed primarily at accident, health, and life insurers: C, D, G, H, I, J, K, L, M, N, O, P, Q, S, V, W, X, Y, ee, hh, ii. Thus 20 of the 35 sub-sections within this section deal with accident, health, and life insurers.

3. Exceptions, Reductions, and Limitations

We would also ask that property and casualt- insurers be excepted from this section. We question whether the advertising of the typical and reputable property and casualty insurer can meet the requirement that "when an advertisement refers to any dollar amount of benefits payable....it should also disclose the exceptions...affecting the basic provision of the policy without which the advertisement would have the capacity and tendency to deceive and mislead." With the number of exceptions in the normal property and casualty policy, it is difficult to determine those which should be brought to the attention of a prospective purchaser. A number of companies get around this problem by stating in their brochures: "this presentation is only a short description of the coverages for the purposes of direct comparison to coverages offered by the companies. Complete terms, conditions and exclusions can be stated exactly only in the context."

4. Identify; Testimonials, Endorsements or Commendations by Third Parties: and Service Facility

These sections in the regulations (IX, X and XX) seem to us to be clearly aimed at the accident, health or life insurer. These regulations attempt to limit the use of testimonials by well known personalities as well as use of a reference to an unusual circumstance in promotion of the value of the insurance policy. We would argue that other parts of the regulation clearly would prohibit misleading advertisements as well as severely restrict the allowable advertisements. As a result, we believe the intent of these sections is already met by the previous sections of the regulation.

5. Insurers Advertising File

Section 22 relates to a file which insurers must keep. We believe property and casualty insurers should be excepted from this file. This section would require that an insurer not only keep on file the advertisement made in the state of Minnesota but also advertisements made in any other state in the United States.

This requirement would impose unnecessary administrative costs on insurers. We also question whether the aim of this for the commerce department to regulate insurers activities in other states. If that is the case, we would argue that the department clearly does not have this authority. We also see no need for the chief executive officer of an insurer to personally approve that such advertisement conform to this regulation. Clearly the department has the power to enforce the regulation and we believe that would be adequate supervision over insurers' compliance with this and other regulations.

Ralph, I hope these additional comments have been helpful to you. Please let me know if we can be of any further assistance.

Sincerely,

Bradley L. Kading
Branch Manager
North Central Region

BLK/la

IDS

IDS LIFE INSURANCE COMPANY IDS Tower, Minneapolis, Minnesota 55402

October 24, 1983

The Honorable Michael A. Hatch
Commissioner of Commerce
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Insurance Agent Rules 4MCAR §1.9020 &
Proposed Part I, Marketing Standard Rules, §V

Dear Commissioner Hatch:

IDS Life previously submitted comments on sections 4MCAR §1.9020 and V of the above rules by letters dated September 15, 1983.

As a supplement to those comments, I have enclosed a draft of alternate language for those "suitability" sections. We believe that the alternate language more clearly addresses the factors which an agent should consider in an insurance transaction, providing the insurer, agent, customer and your department with guidance as to the factors to be reviewed.

This alternate language is based on proposed National Association of Securities Administrators guidelines on unethical business practices for investment advisers (Section 1), as modified by me to apply to insurance transactions.

Yours truly,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

Alternate language for Marketing Standards, Section V and Insurance Agent Rules, 4MCAR§____ Suitability:

Suitability of Policies: An agent shall not recommend the purchase of any insurance to a customer, without reasonable grounds for believing that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's objectives, financial situation and needs, and any other information known by the agent.

IDS Life 10/24/83

PENNCORP FINANCIAL, INC.

EXECUTIVE OFFICES: 3130 WILSHIRE BOULEVARD, SANTA MONICA, CALIFORNIA 90406 • 213-828-6411

ROBERT J. LODEWICK, JR.
VICE PRESIDENT
AND COUNSEL
GOVERNMENTAL AFFAIRS

Direct Dial Number
453-7131

1.55 Sam

FEB 3 1984

February 2, 1984

FEB 3 1984

Richard Gomsrud
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Adoption of Rules Relating to
Insurance Marketing Standards

Dear Mr. Gomsrud:

We have reviewed the referenced proposed Rules and have the following comments regarding them:

1. Definitions Section 1.9423 of the proposed Rule would include, as advertisements, in subsection 4, "statements, written or oral, by an agent". It is our view that advertising is generally regarded as material which has been designed in advance by a company or agent and intended for the dissemination to the general public or for use with the public at large, in order to create public interest in insurance or to induce the public to purchase, increase, modify, reinstate or retain their coverage. We do not think that the concept of advertisement should be viewed as including information which may be conveyed by an agent, either orally or in writing, during the spontaneous activity attendant upon a sales meeting. This type of information is generally regarded as an agent's work notes. Such work notes are usually generated in response to questions of a prospective insured. Very often a prospective insured will ask an agent to leave such work notes with him. They are usually simple statements or illustrations highlighting a particular feature of an insurance program. We would venture to say that almost every agent of every company on every sales call taking place, produces work notes during the course of the meeting. Of course, it is necessary for all of the information conveyed in the work notes to be accurate. If any such information is substantially

inaccurate it, of course, would be viewed, as it has traditionally, as a violation of the Unfair Trade Practices restrictions against misleading or deceptive statements. We think it is very undesirable to invoke the full array of provisions in the Advertising Regulation to agent work notes.

2. Under Section 1.9441A of the proposed Rules, a company would be responsible for the advertisements and representations, whether written or oral, of any of its agents, even though those advertisements and representations were not authorized by the company. This, it appears to us, would impose a impossible burden and duty on the company, which could not prevent an agent, or an independent contractor, from making statements and representations, which have not received the prior approval of the insurer. While, it is reasonable to require the insurer to approve advertisements before use by its agents, a penal responsibility should not be imposed on the insurer, when an agent has used unauthorized material, either in the form of advertisement, or representations. The insurer, of course, is civilly responsible to an insured for any misrepresentation of its agent, but this concept should not be expanded to punitive sanctions against the company.

We trust that these comments will assist you in your deliberations.

Best regards,

Robert J. Lodewick, Jr.

RJL:py

cc: Robert Demichelis
American Council of Life Insurance

IDS

IDS LIFE INSURANCE COMPANY IDS Tower, Minneapolis, Minnesota 55402

January 30, 1984

Mr. Richard Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

FEB 2 1984

RE: Proposed Rules Relating to Insurance Marketing Standards
4MCAR§§1.9420-1.9442

Dear Mr. Gomsrud:

As provided in the Notice of Intent to Adopt Rules Without Public Hearing, IDS Life Insurance Company submits the following comments.

We understand that 4MCAR§1.9424 "Suitability of Policies" will be deleted from this rule. We recommend that such be deleted. It is our understanding that a suitability requirement is to be contained in the insurance agent practices rules (4MCAR§1.9019), and we believe it is more properly placed in that rule.

IDS Life Insurance Company repeats its request that the suitability standards be revised, whether in the marketing standards or insurance agent practice rules, for the reasons and in the form previously provided to your Department by letter of December 19, 1983 (a copy of which is enclosed and incorporated herein).

Additionally, there is a typographical error in 4MCAR§1.9425, B.1 Page 5, Line 3. The term "loss time benefits" should be "loss of time benefits".

Sincerely,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

Enclosure

CC: Commissioner Hatch

IDS LIFE INSURANCE COMPANY
IDS Tower
Minneapolis, Minnesota 55402

December 19, 1983

Mr. Thomas L. O'Malley
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Rules Relating to Insurance Agent Practices
For MCAR SS1.9011 - 1.90281

Dear Mr. O'Malley:

As provided in the Notice of Intent to Adopt Rules Without Public Hearing received on November 29, 1983 by IDS Life Insurance Company from the Minnesota Department of Commerce, I wish to submit the following comments on 4 MCAR S1.9019 Suitability.

IDS Life Insurance Company requests that 4 MCAR S1.9019 be reviewed and reconsidered by the Department of Commerce and that the alternate language which I have attached to this letter be substituted for the language currently proposed.

As briefly touched on in IDS Life Insurance Company's September 15 and October 24 comments on exposure drafts of this rule, there are at least several reasons which support and compel modification of the proposed language. They are as follows:

1. The "suitability" provisions as currently drafted are extremely broad and vague. They provide no guidance to the agent as to what information should be sought.

   The alternate language establishes three pertinent areas with respect to which the agent must make inquiry: (a) customer's objectives; (b) customer's financial situation and needs; and (c) any other information known by the agent.

2. The proposed "suitability" provision requires that the agent make reasonable inquiries to determine suitability. However, there is no guidance or limit as to the sources which the agent must contact in making reasonable inquiries.

   The alternative language retains the requirement that the agent make reasonable inquiry and contains a requirement that the agent have

reasonable grounds for believing the recommendation is suitable to the customer. The agent is accountable for information known by the agent. The alternative language differs from the proposed language, however, in requiring that the agent's reasonable inquiry be on the basis of information furnished by the customer. The customer is the person with whom the agent is dealing. The person from whom the agent obtains information should be the customer or persons whom the customer requests be contacted. To require otherwise may dictate that the agent violate customer desires or confidences in obtaining information to otherwise satisfy the reasonableness requirements of the proposed "suitability" provision.

3. The alternative language attached is based upon proposed National Association of Securities Administrators guidelines on ethical business practices for investment advisers (Section 1), as modified by me to apply to insurance transactions.

   The background of this particular section and prior securities industry compliance efforts, provide a workable basis upon which agents and insurance companies can develop procedures to insure compliance with these requirements.

4. The proposed "suitability" provision, because of its broad scope, potentially requires that an agent predict with certainty a client's future situation.

   The alternative language recognizes that the agent must rely upon information provided by the customer at the particular point in time at which the insurance purchase recommendation is being made.

We would appreciate your consideration of your comments and the alternative language. If you have any questions, or desire further information, please contact me.

Sincerely,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

Alternate language for Marketing Standards, Section V and Insurance Agent Rules, 4MCAR§____ Suitability:

Suitability of Policies: An agent shall not recommend the purchase of any insurance to a customer, without reasonable grounds for believing that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's objectives, financial situation and needs, and any other information known by the agent.

IDS Life 10/24/83

W. CLEMENT STONE
CHAIRMAN

PATRICK G. RYAN
PRESIDENT

COMBINED INSURANCE COMPANY OF AMERICA
SERVICE STRENGTH SECURITY

TELEPHONE 564-8000
AREA CODE 312
CABLE ADDRESS—COMBINED
TELEX NO. 254557

707 COMBINED CENTRE • NORTHBROOK, ILLINOIS 60062

January 25, 1984

State of Minnesota
JAN 30 1984
Department of Commerce

Mr. Richard Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RE: Proposed Adoption of Rules Relating to Insurance Marketing Standards

Dear Mr. Gomsrud:

After reviewing your Proposed Rules Relating to Insurance Marketing Standards, we would like to submit the following comments and recommendations and respectfully request that the rules in their present form not be adopted.

With respect to the section regarding "Suitability of Policies" (Section 1.9424), we would urge you to delete this provision in its entirety. By requiring agents to determine the suitability of a particular policy for an individual, the individual's freedom of choice as to whether or not to purchase a particular policy becomes limited. Further, this requirement would place an undue burden upon agents, particularly those selling supplemental policies which are not intended to replace any existing policies.

As an alternative to deleting this provision in its entirety, we would suggest an amendment exempting agents from this requirement when selling supplemental insurance, except medicare supplement policies. This section could be rephrased as follows:

> "In recommending the purchase of any life, endowment, annuity, life endowment or medicare supplement insurance to a customer, an agent must have reasonable grounds for believing that the recommendation is suitable for the customer, and must make reasonable inquiries to determine suitability. This section does not apply to the sale of supplemental insurance which is not intended to replace any existing policies other than medicare supplement insurance. The suitability of a recommended purchase . . . recommended policy or policies."

With respect to Section 1.9425 ("Deceptive Words, Phrases, or Illustrations"), we wish to make the following comments and recommendations:

Paragraph D "Benefit Terms", appears unnecessarily restrictive and could be interpreted to effectively preclude the advertisement of hospital indemnity policies and disability income policies. We feel that the NAIC Model Regulation regarding the advertising of accident and sickness insurance (Section 6A(4)), would address the issue, however, it would do so in a less restrictive way. We would, therefore, recommend the use of the language as set forth in the NAIC Model in place of the current paragraph regarding benefit terms. The NAIC Model version reads as follows: "No advertisement of a benefit for which payment is conditional upon confinement in a hospital or smaller 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 or 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."

Paragraph Y entitled "Limited Accident and Health Policies", appears unncessary due to the fact that limited accident and health policies already include the language relating to limited coverage directly on the face of the policy. Thus, the policyholder is aware of this limitation particularly when the policy is issued at the time of the agent's presentation. We would, therefore, recommend that this provision be stricken from the proposed rules.

We would appreciate your serious consideration regarding the above. If you have any questions regarding these comments, please do not hesitate to call or write.

Very truly yours,

COMBINED INSURANCE COMPANY OF AMERICA

Debra R. Lester - Counsel
Government Relations Department

DRL/dm

Comments

MINNESOTA MUTUAL LIFE

Minnesota Mutual Life Center
400 North Robert Street
St. Paul, Minnesota 55101
612/298-3500

State of Minnesota
JAN 23 1984
Department of Commerce

January 20, 1984

Mr. Richard Gomsrud
General Counsel
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Rules Relating to Insurance Marketing Standards

Dear Mr. Gomsrud:

We are submitting additional comments on the above proposed rules.

Enclosed for your review is a memorandum prepared by Mr. Robert J. Demichelis, Associate General Counsel of the American Council of Life Insurance. Mr. Demichelis is an expert on this subject, and we do ask that you carefully consider his comments.

We must again strongly recommend that the definition of "Advertisement" (4 MCAR Section 1.9423) not include "statements, written or oral, by an agent". We do not see the necessity for covering such statements nor do we feel it is desirable to do so here. In our opinion, written or oral misrepresentations can be adequately dealt with under existing statutes, such as Minnesota Statutes Section 72A.12, Subd. 2 and 72A.20, Subds. 1 and 2, copies of which are attached. In this connection also note that under 4 MCAR Section 1.9441B an insurer shall require its agents or agencies, etc. preparing "advertisements" to submit them to it for approval prior to use. Because written or oral statements are included as "advertisements" companies and agents would be confused about exactly what has to be submitted for prior approval. An insurer will simply not be in a position to monitor all such statements made by its agents, which I am sure you can appreciate. Also, it would obviously place an unfair burden upon agents if they would have to have their written or oral statements approved in advance.

We again express our concern about 4 MCAR Section 1.9424 which deals with "suitability". It's our understanding from Commissioner Hatch that since an identical "suitability" provision is to be in the rules relating to insurance agent conduct such a provision will not have to be included in these rules. Therefore, we would like to make sure that this section is deleted. We do feel it's inappropriate to address "suitability" in what are essentially rules relating to advertising.

We invite your attention specifically to paragraph number 4 starting on the first page of the attached memorandum. We feel it's important to define "Institutional Advertisement" as it is defined in the model "Rules Governing Advertisements of Accident and Sickness Insurance" and then to exempt that specific type of advertisement from the several sections referred to in the memorandum. The definition of "Institutional Advertisement" in the model Rules is: "Institutional Advertisement" for the purpose of these rules shall mean an advertisement having as its sole purpose the promotion of the Readers or viewers interest in the concept of accident and sickness insurance, or the promotion of the insurer". Since such advertisements are used for the limited purpose of promoting an interest in the concept of accident and sickness insurance or promotion of the insurer they should not be covered under the sections referred to in the memorandum.

Also, we invite your attention to paragraph number 9 on page 3 of the memorandum which relates to 4 MCAR Section 1.9441B referred to above. We do not believe this section is necessary or desirable since a "system of control" must be established in any event under 4 MCAR Section 1.9441A. As indicated above the prior approval requirement would create a serious compliance problem for the insurer, which is ultimately responsible in any event for the advertisements or representations relating to its policies.

We again appreciate the opportunity to express our comments to you. If you do have any questions at all, please contact us at your convenience.

Sincerely,

William C. Schlafge

William C. Schlafge
Second Vice President
Law Department

WCS:sh

Enclosure

cc: Mr. Michael Hatch

January 6, 1984

Re: Minnesota Proposed Advertising Rules

The proposed rules (4 MCAR §§1.9420-1.9442) are patterned after the NAIC Model Accident and Health Insurance Advertising Rules. They are made applicable to advertising of life insurance and annuity contracts as well as to self-insurers and self-insurance plans.

1). The proposed terminology is based on health insurance products and clearly not applicable to life insurance and annuity products. For example, definitions of "exception", "limitation" and "reduction". Attempts to apply these definitions to life insurance and annuities will be confusing and create serious ambiguities. This issue is addressed partially in §1.9426, but is not addressed in §1.9425Z. Another example is "pre-existing conditions" (§1.9425V and 1.9426B).

2). The proposed rules apply to oral representations as well as to written advertisements made by insurers and agents. Efforts to enforce these detailed rules on oral representations will be extremely difficult and almost impossible.

3). The proposal contains a suitability provision (§1.9424) identical to the provision contained in the agent conduct proposed rule. If suitability rules are to be adopted, they should not be in the advertising rules.

4). There is no attempt to differentiate between institutional advertising and advertising concerning invitations

to contract and invitations to inquire. At the minimum, a definition of institutional advertising should be included and be specifically exempted from several provisions of the proposed rules such as §§1.9426, 1.9427, 1.9429, 1.9434, etc.

5). Existing Minnesota rules INS. 50-69, adopted in June 1964, should be repealed since the subject matter is included in these proposed rules.

Technical amendments need to be made throughout the regulation as follows:

1). Several paragraphs use language which prohibit the use of certain terminology "unless true and accurate" or "unless the statement is literally true" or "unless that is the fact." Since these phrases have the same purpose, it would be preferable to use uniform terminology in order to eliminate possible ambiguities. In addition, comparable language should be inserted in sections 1.9425B, C and D.

2). The regulation is almost consistent in using the word "must" rather than "shall" throughout. In the following sections, however, corrections should be made to replace the word "shall" with the word "must": Sections 1.9425G, Q, U (two places), X and Z; 1.9426C, 1.9429D, 1.9432B, 1.9435A, 1.9440A, 1.9441A and B.

3). Section 1.9436A repeats a prohibition included in the last sentence of section 1.9425A. There is no need for this prohibition to appear in both places and I would suggest that the final sentence of Section 1.9425A be deleted.

4). Section 1.9425L. The NAIC comparable language uses

the substitution be made so the provision will be realistic.

5). Section 1.9425BB contains an exception for property casualty insurers. Since the regulation is not to apply to P/C insurers, the language is redundant and it is suggested that it should be eliminated.

6). Section 1.9425Z. The words benefit builder not in quotes at the end of the first sentence should be placed in quotation marks since the term is not a definable insurance term.

7). Section 1.9428B. In line 26, the word "identify" is inaccurate and should be replaced by the phrase "true identity".

8). Section 1.9441A. On page 18, line 35, the words "dissemination of" should appear between the words "of" and "advertisements".

9). Section 1.9441B. This requirement is new to Minnesota and, to my knowledge, does not exist in any other state. As drafted, it appears to establish a strict compliance duty upon the insurer which could be easily violated by innocent or inadvertent acts on the part of insurers and agents. It is suggested that the regulation be written so as to require the insurer to establish reasonable procedures for agents to submit proposed advertisements to the insurer. It would be preferable to delete this entire paragraph since the responsibilities for all advertisements are placed on the insurer, under the terms of the regulation.

10). Section 1.9422A, line 24, uses the phrase "comprehended by". Since the preceding language refers to "a person", it

is suggested that the word "by" be replaced by the word "within", otherwise it could be interpreted to mean comprehension by every member of that segment of the public. The change would be consistent with NAIC language.

11). Section 1.9425B, line 3, page 5, uses the phrase "loss time benefits". It should read "loss of time benefits", to be accurate. Also the section would be improved by language similar to: "Words or phrases may be used where they are true and accurate in describing the coverages of a particular policy."

12). There should be an effective date in order to allow sufficient lead time for compliance in view of commitments made or to be made for distribution by the media, as well as education of agents, etc.

72A.10 FAILURE TO APPEAR OR OBSTRUCTING COMMISSIONER.

Whoever without justifiable cause neglects, upon due summons, to appear and testify before the commissioner, or obstructs the commissioner, or deputy or assistant commissioner, in his examination of an insurance company, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

History: *1967 c 395 art 12 s 10*

72A.11 COMPLAINANT ENTITLED TO ONE-HALF OF FINE IN CERTAIN CASES.

The person, other than the commissioner, or deputy or assistant commissioner, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in this state, shall be entitled to one-half the fine recovered upon sentence therefor.

History: *1967 c 395 art 12 s 11*

72A.12 LIFE INSURANCE.

Subdivision 1. **Issue of prohibited life policies.** Every officer or agent of a life insurance company who shall issue any policy in violation of any order or other prohibition by the commissioner made pursuant to law, shall be guilty, for the first offense, of a misdemeanor, and for each subsequent offense, of a gross misdemeanor.

Subd. 2. **Misrepresentation by insurer or agent.** No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and the license of any company which shall authorize or permit a violation of this subdivision shall be revoked.

Subd. 3. **Discrimination in accepting risks.** No life insurance company or agent, all other conditions being equal, shall make any discrimination in the acceptance of risks, in rates, premiums, dividends, or benefits of any kind, or by way of rebates, between persons of the same class, or on account of race; and upon request of any person whose application has been rejected, the company shall furnish him, in writing, the reasons therefor, including a certificate of the examining physician that such rejection was not for any racial cause. Every company violating either of the foregoing provisions shall forfeit not less than $500, nor more than $1,000, and every officer, agent, or solicitor violating the same shall be guilty of a gross misdemeanor; and the commissioner shall revoke the license of such company and its agents, and grant no new license within one year thereafter.

Subd. 4. **Discrimination; rebates.** No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor, or representative thereof pay, allow or

obtained, or use, a proxy vote in violation of any provision of law shall be guilty of a gross misdemeanor.

Subd. 2. **Guaranty against assessment.** Every director, officer, or agent of an insurance company who officially or privately gives a guaranty to a policyholder thereof against an assessment for which he would otherwise be liable shall be guilty of a misdemeanor.

History: *1967 c 395 art 12 s 16*

REGULATION OF TRADE PRACTICES

72A.17 PURPOSE OF SECTIONS 72A.17 TO 72A.32.

The purpose of sections 72A.17 to 72A.32 is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

History: *1967 c 395 art 12 s 17*

72A.18 DEFINITIONS.

Subdivision 1. **General.** Unless the context clearly indicates otherwise, the following terms, when used in sections 72A.17 to 72A.32, shall have the meanings, respectively ascribed to them in this section.

Subd. 2. **Person.** "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, or any other legal entity, engaged in the business of insurance, including an agent, a solicitor, or an adjuster and for the purposes of sections 72A.31 and 72A.32 "person" shall in addition mean any person, firm or corporation even though not engaged in the business of insurance.

History: *1967 c 395 art 12 s 18*

72A.19 UNFAIR METHODS AND UNFAIR OR DECEPTIVE ACTS AND PRACTICES PROHIBITED.

Subdivision 1. No person shall engage in this state in any trade practice which is defined in sections 72A.17 to 72A.32 as or determined pursuant to sections 72A.17 to 72A.32 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Subd. 2. The commissioner may, in accordance with chapter 14, promulgate reasonable rules and regulations as he deems necessary to enforce and administer the provisions of this chapter.

History: *1967 c 395 art 12 s 19; 1980 c 436 s 2; 1982 c 424 s 130*

72A.20 METHODS, ACTS AND PRACTICES WHICH ARE DEFINED AS UNFAIR OR DECEPTIVE.

Subdivision 1. **Misrepresentations and false advertising of policy contracts.** Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon

which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

Subd. 2. **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 3. **Defamation.** Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 4. **Boycott, coercion and intimidation.** Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation, resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 5. **False financial statements.** Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive, shall constitute an unfair method of competition and an unfair and deceptive act or practice in the insurance business.

Subd. 6. **False entries.** Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 7. **Stock operations and advisory board contracts.** Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 8. **Discrimination.** Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of annuity or in the dividends or

Comments

Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101
(612) 292-1099

State of Minnesota

JAN 09 19

Department of Commerce

January 6, 1984

Mr. Richard G. Gomsrud
Staff Attorney
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Proposed Adoption of Rules Relating to Insurance Marketing Standards

Dear Dick:

Regarding the above, the Insurance Federation of Minnesota understood that since the suitability of policies section was contained in the proposed rules relating to insurance agent conduct, 4 MCAR Section 1.9019 published in the State Register on Monday, November 28, 1983, that it would not be necessary to put the identical language in the proposed rules relating to insurance marketing standards, 4 MCAR Section 1.9424 published on Monday, January 2, 1984.

Commissioner Hatch agreed to delete the suitability provision from either the agent conduct regulation or the marketing standards regulation. We would, therefore, recommend that the suitability provision be dropped from the marketing standards regulation.

With kind regards, I am

Sincerely,

Ralph J. Marlatt,
President

RJM:cw
c.c. Commissioner Michael Hatch

Dominic Sposeto & Associates

3916 CHOWEN AVENUE S. • MINNEAPOLIS, MN 55410

December 20, 1983

State of Minnesota
9:11 am
DEC 22 1983

Michael A. Hatch
Commissioner of Commerce
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Dear Commissioner Hatch:

The Legislative Committee of the Minnesota Association of Life Underwriters has reviewed the latest draft of your proposed rules relating to marketing standards for insurance products. They have directed me to call to your attention two concerns that the Committee has with regard to the proposed rules. They are:

1.) 4 MCAR S 1.9423 Definitions. We find the proposed definition of advertisement, which included item 4. "statements, written or oral, by an agent", to be extremely broad. We construe this to mean that anything an agent says may be considered a form of advertisement. We are quite sure that this is not your intent and request that this section of the definition be deleted or that you expand this part of the definition to state advertisments are statements made by an agent to a prospective client directly related to the intended sale of an insurance product.

2.) 4 MCAR S 1.9441 Responsibility of insurer, agent or agency. We feel that section B which would require an agent to obtain prior approval from an insurer for all advertisements naming the insurer or its products is completely unworkable and places an undue hardship on the agents of this state. Given your rather broad definition of an advertisement, it would be virtually impossible for an agent to receive prior approval from an insurer for every sales talk, presentation or oral statement made during an insurance transaction. Most MALU members are appointed to sell insurance for several companies and it would be extremely burdensome for them to be constantly seeking company approval for their statements and individual presentations. Furthermore, an agent in a discussion with a prospective client may not have prior knowledge of the types of products most suited to that client's needs and therefore will not be able to obtain prior company approval. We would request that you delete this section from your proposed rules.

If you have any questions regarding this correspondence, please feel free to contact me directly. The association has reviewed your proposed agent conduct rules and found no major concerns. We will neither request a public hearing or submit any written comments. Thank you for giving us an opportunity to work with you and your staff on these rules.

Yours very truly,

Dominic J. Sposeto

Request for Hearing

HEALTH INSURANCE ASSOCIATION OF AMERICA

332 S. Michigan Avenue, Chicago, Illinois 60604-4362, (312) 322-0800

Caroll Callaway
Associate General Counsel

January 10, 1984

Mr. Richard Gomsrud
Minnesota Department of Commerce
500 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

Re: Department of Commerce Proposed Adoption of Rules --
Relating to Insurance.Claims Settlement (8 S.R. 1562) --
Relating to Insurance Marketing Standards (8 S.R. 1568)

Dear Mr. Gomsrud:

In accordance with the procedures and requirements of the Minnesota State Administrative Procedures Act, we respectively register our request for public hearings to be scheduled regarding both of the above captioned Rules presently proposed to be adopted without hearing as emergency measures.

Our Association represents some 340 health insurance companies doing business nationally, many of which are licensed in and do business in the state of Minnesota. On behalf of our member company interests, would you please notify me as to the scheduling of public hearings and the date thereof.

Yours truly,

Caroll Callaway
Associate General Counsel

CC/de
cc: Ralph Marlatt, Insurance Federation of Minnesota
Richard Crowl, Northwestern National Life

will use fancy paper of some sort on its application forms simply to note importance rather than to mislead.

9. Section VI dd - This subsection prohibits the use of phrases such as "here is all you have to do to apply," "simply," or "merely" when referring to the act of applying for a policy which is not guaranteed issue. Yet, the fact is that the words which are here prohibited do accurately describe the fact that it is simple to apply for certain kinds of insurance. As the Department knows, these words are used as prefaces for brief explanations of how one goes about applying for insurance. On its face, this would seem to be a fairly innocent explanation to consumers. There is neither a guarantee nor an implied guarantee that every application will be accepted or that the prospective insurance purchaser will be happy with the insurance quote which he or she receives. Thus, we would suggest that this subsection ought to be deleted.

10. Section VI ee - This subsection would probably end most national advertising done by insurance companies on television. We fail to understand what purpose is served by prohibiting insurance companies from depicting the precise circumstances under which their products would have to be used. The very purpose of insurance is to provide people with protection from situations which, by definition, must cause fear and anxiety. Surely, automobile collisions, home fires, and death are expected to cause everybody anxiety. Further, the prohibitions contained in this subsection would keep insurance companies from showing how they were able to step in and help people who would otherwise have been ruined by such natural catastrophes as hurricane Alicia. Simply stated, almost any insurance advertisement could somehow be interpreted, under this subsection, to cause "undue fear or anxiety." We would suggest that this section would be best deleted.

Allstate appreciates the opportunity to provide the Department of Commerce our comments on Part I prior to the publication of these proposed regulations. We hope our remarks have been constructive and we would welcome any comments or questions which the Department may have.

Very truly yours,

Richard Levenfeld

Richard B. Levenfeld

RBL/gsm

cc: Insurance Federation of Minnesota

IDS

IDS LIFE INSURANCE COMPANY IDS Tower, Minneapolis, Minnesota 55402

September 15, 1983

Mr. Dale McDonnell
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

RE: Proposed Marketing Standards

Dear Dale:

Commissioner Hatch provided a draft of the proposed marketing standard rules to IDS. He requested that written comments be submitted to you.

These comments are submitted in conjunction with our responses to the proposed claims settlement and agent conduct standards. Our comments will highlight those areas that affect life and health insurance. Detailed comments are being submitted by the Insurance Federation of Minnesota. We generally subscribe to the comments submitted by the Federation and will not repeat those comments other than in the areas we have highlighted our concerns.

The concerns we've addressed below can in most part be resolved by reference to the NAIC Model Rules Governing Advertisements Of Accident And Sickness Insurance and Life Insurance ("A & H Model" or "Life Model"). References below correspond to the citations in your August 17 draft.

1. Section III. A. 3. & 4. - The inclusion of representations made by agents or statements made by agents within the definition of "advertisement" is so vague and the number of possibilities so overwhelming that it will be impossible, let alone time consuming, to require insurers and concurrently regulators to review, monitor and enforce such procedures. We recommend that you delete these particular requirements, believing that representations or statements of this type are adequately addressed and remedied under the Minnesota unfair trade practice statutory provisions.

   If representations and statements continue to be included within these regulations, such would under the framework of the August 15 draft require pre-clearance by the insurer of all statements made by an agent before they could be uttered (see for example Section XXII and XXIII). It would be impossible for an agent to say anything other than from a prepared script to a customer in regard to a product if the "advertisement" file maintenance and review procedures remain in place with respect to statements and representations of agents, whether written or oral.

2. Section IV. - The standard which the department has stated as a policy in reviewing advertisements under Section II. C. 2. should be included within Section IV. Insurers must have a defined standard for review and compliance in its advertising practices.

3. Section V. - The suitability provision as currently contained within this regulation is so vague as to cast extreme doubt as to its enforceability. There are no standards contained within this section to guide the insurer or its agent in making such determinations. Furthermore, the nature of life and health insurance is such that circumstances change and differ at various points of time. As now drafted, the insurer or agent would be in the untenable position of trying to predict a client's future situation. It is our recommendation that this suitability provision be deleted. This section is unnecessary because the disclosure standards in this regulation as finally adopted will require disclosure of pertinent information upon which a customer can analyze the contract features in relation to his or her understanding of their current and future financial situations.

4. Section VI. C. - In certain instances the availability of tax free or tax deferred benefits under the contract may be an important and material consideration to the customer. To require a explanation of the rules applicable to the taxation of the contract will in many instances preclude any disclosure of this important fact. We would recommend that you modify this provision to reflect an insurers or agents ability to make reference to tax free or tax deferred benefits under a policy, provided the insurer or agent maintains references to the applicable statutory provisions in its files.

5. Section VI. X. - The last sentence of this particular provision is confusing. If its intent is to require disclosure where a contract provides for immediate coverage of pre-existing conditions, I would suggest that it be reworded as follows:

> "A statement that pre-existing conditions are covered immediately under the policy must also be part of the advertisement if the policy in fact provides such coverage."

6. Section X. A. - This language should be clarified to require notice that compensation is being paid to the customer. To require a detailed discussion of the types and amount of compensation is in reality impracticable in many situations. At a given time the amount of compensation will be unknown and in many instances not capable of calculation. I would refer you to Section XVIII. B. of the A & H Model for appropriate language to address the concerns I've raised.

7. Section XI. B. - As currently drafted this section creates severe problems for direct mailers, whose advertising copy is limited by space and postal rate constraints. For example, read literally, if a direct marketer were to mail this advertisement nationwide in the

jurisdictions in which it was authorized to solicit the product, in order not to be misleading it would have to list every state in which it is offering the product. This is an unworkable alternative if an insurer is to undertake nationwide mailings. I would suggest that at a minimum the language be modified to allow an insurer the alternative of listing states in which it is not licensed. Preferably I would refer you to the Life Model, Section VII. 2. for more adequate language. Since insurance advertising practices of insurers are regulated by these rules, the approach taken by the Life Model would provide adequate protections.

8. Section XIII. D., E., & F. - Because of the definition of " similar policies" the requirements imposed by these sections would restrict an insurer from mailing a limited issue direct marketed term life policy while at the same time having its agent-sold products solicited in the state even though the two programs were not related. This prohibition would apply whether or not the agent intentionally or unintentionally happened to solicit a client who had been approached, for instance, through direct mail solicitation. For this reason, we suggest that you redefine the term "similar policy". I would refer you to Section XV. of the A & H Model (including the guidelines) and Section V. 13. of the Life Model. These Model provisions resolve the concerns you have and address the problems which I have raised above.

9. Section XVI. A. - The last sentence requires inclusion of statistical information sources in all advertisements or representations. Please see item 4. above for a discussion of the general problems raised by this requirement and an effective way to resolve those problems.

10. Section XXII. A. - We recommend deletion of the portion of this section which requires maintenance of a copy of the policy, amendments, riders, and endorsements in the file with each advertisement. Since notations to the file have been made which identify the policy, amendment, rider, or endorsement as well as other information, this requirement is duplicative and serves no additional purpose. Should a regulator wish to review advertisements and pertinent forms, the insurer can access copies of those policy forms.

11. Section XXII. B. - We would suggest that the words "chief executive officer" be modified to read "authorized officer". This change would reflect the fact that the person designated by the company to maintain advertising files could sign such representation and would be most familiar with the compliance and maintenance of appropriate files.

If you have any questions, please call me.

Sincerely,

David F. Dierenfeldt
Associate General Counsel

DFD:bab

Insurance Federation of Minnesota
1310 Pioneer Building
St. Paul, MN 55101
(612) 292-1099

September 16, 1983

State of Minnesota
SEP 16 1983
Department of Commerce

Mr. Dale L. McDonnell
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RE: PROPOSED RULES GOVERNING MARKETING STANDARDS

Dear Mr. McDonnell:

We very much appreciate the opportunity to review the draft of the proposed rules you sent us on the above subject. Although we have received a number of comments about certain provisions of the draft rules, we will comment on only the major concerns, but of course would like the opportunity to advise you of all our concerns.

We feel it is essential that there be uniformity among any rules adopted in Minnesota with those which have been adopted by the other states. This is crucial since much of our member companies' business is written on a national or multi-state basis and they are required to comply with rules on a state-by-state basis. Also, we feel the rules must be as unambiguous as possible so there will be uniformity in their interpretation.

We note that much of the substance of the draft rules was derived from the NAIC Model Rules Governing Advertisements of Accident and Sickness Insurance With Interpretive Guidelines and the NAIC Model Rules Governing The Advertising Of Life Insurance. These are separate, very detailed, rules relating to those specific lines. We strongly urge you to consider separate rules for each of the affected lines. It would be far easier for companies to comply with separate rules relating to specific lines than would be the case if there is no separation. Not separating the rules would simply create a lot of confusion. Separation of the rules by lines is the approach adopted by essentially all states.

Incidentally, we understand that about 36 states have adopted the NAIC Model Rules Governing Advertisements of Accident and Sickness Insurance. A lesser number have adopted the NAIC Model Rules Governing The Advertising of Life Insurance. However, we believe that's because there has been a greater concern about advertisements in the accident and sickness line, particularly with medicare supplement and dread disease policies. We strongly urge you to also adopt the model rules <u>and</u> the guidelines relating to the model accident and sickness rules. The guidelines are necessary for the proper interpretation of the rules. As you know, there are <u>no</u> model rules governing advertisements for the property/casualty lines. However, we would be pleased to work with you in developing rules specifically for these lines. In any event, we do not feel it's appropriate for advertisements in the property/casualty lines to be governed by rules relating to advertisements in life/health insurance lines.

The draft rules govern not only printed and other forms of advertisements but also oral representations. We do not believe it is necessary to deal with oral representations in such a broad sense in the advertising rules. We feel oral representations generally fall more into the category of sales and solicitation practices. If there are problems with oral representations which misrepresent facts, these could be handled under existing statutes, such as Minn. Stat. Section 72A.12, Subdivision 2 and 72A.20, Subdivision 1 and 2. The model advertising rules and the rules of other states do not include oral representations in the broad sense you are proposing. If treated at all, we think oral representations should be dealt with separately from advertising rules.

It's important to note that while the definition of "Advertisement" in Section III of the draft rules includes the language from the model accident and sickness rules, it does not include language found in the model life insurance rule or the accident and sickness guidelines specifying what an "Advertisement" does not include.

With respect to the definition of "Policy" in Section III C, we urge adoption of the definition in Section III of the model accident and sickness rule and the guidelines thereunder. The guideline language is necessary to clarify what is intended to be defined here.

The draft rules include a "suitability" provision in Section V. Our substantive concerns in this area are summarized in our letter to you regarding a similar section in the agent conduct rules. We feel this section does not belong in these proposed rules governing advertising. No other state has adopted a "suitability" provision in their advertising rules nor is there a comparable section in the model rules.

With respect to Section VI of the draft rules, pages 4 through 11, we strongly urge you to delete these pages and adopt Section 6 of the model accident sickness rules and the guidelines thereunder. They specify in great detail the criteria companies must now follow in the states which have adopted the model rules. Also, with respect to life insurance, Section IV of the model life insurance rules should be adopted because of its' specific application to that line.

Paragraph F of Section VI of the draft rules regarding dividends would create a real problem for our members. State law, Minn. Stat. 72A.12, Subd. 2; 721.20, Subd.1, already prohibits misrepresenting what dividends are. This standard should be incorporated into the regulations. We suggest you adopt Section V, paragraph 9 of the model life insurance rules for that line which deals specifically with dividend "advertisements".

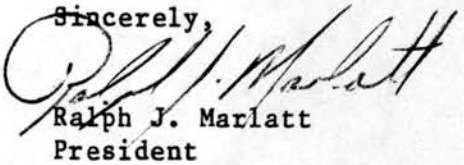
Some of our members have expressed serious reservations about the meaning of Section VI, paragraph S and have asked that it be clarified as to what is intended. The language of this section is not found in either the model rules or in the rules of the other states we've reviewed.

With respect to Section XIII of the draft rules, we strongly suggest that you adopt the model rules for the respective lines. The model provisions deal with the unique and separate concerns found in the life and accident and sickness lines.

As a technical change, we recommend the deletion of the third sentence of paragraph A, Section XXIII. We do not think it's necessary to keep a copy of the policy in the advertising file as long as it can be retrieved. Requiring each policy to be actually kept in the advertising file will cause unnecessary administrative expenses.

We appreciate your expressed willingness to meet with us to discuss our concerns. We look forward to this meeting at your earliest convenience. Please call with any questions you have regarding our comments.

Sincerely,



Ralph J. Marlatt
President

RJM:KAS

STATE OF MINNESOTA
SEP 26 1983
DEPARTMENT OF COMMERCE

FIREMAN'S FUND INSURANCE COMPANIES
1600 Los Gamos Road, San Rafael, California 94911

RICHARD E. BEX
Assistant Vice President
& Assistant General Counsel

September 22, 1983

Mr. Richard G. Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Department of Commerce - Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Unfair Trade Practices - Marketing Standards in Regard to Insurance

Dear Mr. Gomsrud:

The writer is in receipt of a copy of the subject Notice advising of the Department's request for submission of statements of information or comments concerning the subject matter thereof. It would be appreciated if we could be furnished copies of any "drafts" or "proposals" under consideration by the Department, so that we, in turn, can review same with a view toward providing the Department with our input.

Sincerely yours,

Richard E Bex

Richard E. Bex

REB:mu

STATE OF MINNESOTA
SEP 26 1983
DEPARTMENT OF COMMERCE

American Council of Life Insurance

1850 K Street, N.W.
Washington, D.C. 20006
(202) 862-4232

Robert J. Demichelis
Associate General Counsel

September 23, 1983

Mr. Dale L. McDonnell
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposed Rules Governing Marketing Standards

Dear Mr. McDonnell:

I am writing to you on behalf of the American Council of Life Insurance and its more than 570 member companies with assets representing 95 percent of the life insurance in force in the United States.

The proposed rule for Marketing Standards addresses the regulation of advertising material and certain other trade practices and is of considerable concern to our member companies. In its present form, the rule is quite difficult to comprehend due to the all encompassing approach which includes life, health, annuity and property/liability coverages under one rule. Many areas of the proposed rule are clearly intended to apply to only one line of coverage. Compliance and enforcement would be eased considerably if separate rules are adopted for each line of coverage. The Council strongly urges the Department of Commerce to carefully consider the NAIC Model Life Insurance Advertising Rule adopted in 1975 and the NAIC Model Rules Governing Advertisements of Accident and Sickness Insurance and Interpretive Guidelines, as revised in 1974. The Council has long supported the adoption of reasonable advertising rules on a uniform basis. It is absolutely necessary that such rules be uniform among the states since so much advertising is conducted on a national basis, using T.V., national magazines and other forms of mass marketing.

In support of our position that separate rules should be adopted by the Department, it is beneficial to examine how that decision was reached by the NAIC. Advertising rules pertaining to health insurance have had a long history in the NAIC beginning in 1948. Advertising Rules were adopted in 1955 and continually revised until 1974. Coincident with the 1974 action, the NAIC appointed a Task Force to develop regulations governing life insurance advertising. The same NAIC members that drafted the health insurance regulation were appointed to the Task Force. The NAIC concluded that separate regulations were necessary for the separate coverages, even though many of the provisions in the life insurance regulation adopted in June 1975 were based on comparable

provisions of the health insurance regulation. Profiting from earlier experience the Task Force concluded: "To the extent that the Accident and Sickness Advertising Rules were applicable to life insurance advertising, the model regulation should reflect such similarity; however, it should be self-contained and not necessitate either interpretive guidelines or historical footnotes. The model regulation should not include the same degree of specificity as contained in the Accident and Sickness Advertising Rules. The model regulation should cover life insurance advertising generally and not attempt to specify the particular types of products covered, while recognizing that other model laws and regulation cover certain aspects of life insurance advertising. The model regulation should not include any prefiling or preauthorization requirement."

Consequently, the NAIC Life Insurance Advertising Rules represent an improvement over the earlier health insurance advertising rules. Several examples should be sufficient to substantiate the differences:

1) The 1974 revision to the Accident and Sickness Advertising Rules include definitions of institutional advertisement, invitation to inquire and invitation to contract. The Life Insurance Advertising Rules do not. It was the view of both the task force and the advisory committee that past experience with advertising of life insurance and annuities did not require distinguishing between the types of advertisements in the application of the rules.

2) While the health insurance interpretive guide excludes eight (8) types of communications and materials from the definition of advertisement, the Life Insurance Advertising Rules exclude only three (3) types of communication material.

3) Various sections of the NAIC Life Insurance Advertising Rules deal with "specialty" type life insurance policies, which have no relationship to other coverages and would be better treated in a separate regulation (see Section IV 2, NAIC Life Advertising Rules), which are clearly <u>not</u> applicable to health or property/liability coverage.

4) The subject of policyholder dividends is treated in a comprehensive manner in the NAIC Model Regulation. Those provisions are based on New York Insurance Law. The proposed rule represents a considerable departure and presents a substantial obstacle to uniformity in nationwide advertising. The NAIC Regulation expresses the following concepts: "1) that advertisements shall not utilize dividends in a misleading manner; 2) that advertisements shall not state or imply that dividends are guaranteed; 3) that if dividends are illustrated

> in an advertisement they must be based on current dividend scale; and 4) that advertisements shall not state or imply that dividends will be sufficient to assure the receipt of benefits and the conditions under which they will occur are clearly explained."

Numerous other differences can be identified, such as those specifically limited to medicare policies, limited benefit policies, individual retirement annuities, Keough Plans and other tax shelter-type plans and specialty-type life policies which have no relationship to health or property/liability coverages. The Council urges that separate attention be given to each line of coverage. In support of our position, careful consideration should be given to the Advisory Committee report which sets forth the concepts to be considered in interpreting the scope of the NAIC Model Life Insurance Advertising Rules:

> "Life insurance and annuities play an essential role in protecting the financial security of the public. Advertising, in all its varied forms, is a principal motivation or a valuable aid in the sale of these products. While the public interest certainly requires the regulation of such advertising, it must be recognized that such regulation must be designed and applied in such a way as not to arbitrarily inhibit appropriate advertising. The essence of the proposed model regulation is the requirement of full and truthful disclosure of material and relevant information. In interpreting and implementing the regulation, it is important to keep certain factors in mind. For example, interpretations made under advertising regulations developed for other products, such as accident and sickness insurance are not necessarily germane to life insurance advertising. Thus, standard life insurance provisions such as 'Suicide' or 'Incontestability' need not be disclosed, as almost all insurers have substantially identical policy provisions in this area. Similarly, the limitations and exclusions in supplemental benefits, such as waiver of premium and accidental death, or the inclusion of policy provisions relating to such features as policy loans, non-forfeiture benefits and settlement options need not be recited in order to have a disclosure of material information. Such benefits are most often incidental to the motivating reason for the purchase of the life insurance policy. Of course, where such provisions are discussed in a life insurance advertisement in other than an incidental fashion, then obviously material information in connection therewith must be set forth.
>
> "Specific advertising regulations and guidelines tend to be developed to remedy existing problems which the public is experiencing in connection with product advertising. Regulations which are general in nature should not be

"interpreted so as artificially to force advertising to become an educational tool, since to do so may detract from the essential purpose of motivating the purchase of a worthwhile product. This model regulation should, therefore be interpreted and applied under what the courts have termed the 'rule of reason.' Also, experience to date dealing with advertising of life insurance and annuities does not require distinguishing between different types of advertisements, such as invitations to inquire, invitations to contract and institutional advertisements, in the application of this model regulation."

Many other specific areas of potential conflict can be identified in the proposed rule which should be separately addressed by line of coverage. We cannot overemphasize the importance of uniformity in regulating the advertising of insurance. As stated earlier, life and health insurance marketing is largely a multistate operation. For that reason and others cited above, we urge the Department of Commerce to give careful consideration to the NAIC Model Rules and Guidelines.

Sincerely,

Robert J. Demichelis

RJD/cr

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES
1285 Avenue of the Americas, New York, N.Y. 10019

JACKLYN V. KEMPER
Assistant Counsel

September 28, 1983

STATE OF MINNESOTA

OCT 03 1983

DEPARTMENT OF COMMERCE

Mr. Richard G. Gomsrud
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: Proposal to Promulgate Trade Practices Rules Regarding the Marketing of Insurance

Dear Mr. Gomsrud:

In response to your request for information and comments concerning the subject matter of the new rules governing unfair trade conduct in regard to the marketing of insurance in Minnesota, The Equitable recommends the adoption of the NAIC Model Regulation on this subject.

Sincerely,

Jacklyn V. Kemper

JVK:ij

Bankers Life and Casualty Company

Government Relations Department
312-777-7000

4444 Lawrence Avenue
Chicago, Illinois 60630

STATE OF MINNESOTA
OCT 06 1983
DEPARTMENT OF COMMERCE

October 3, 1983

Richard G. Gomsrud
Department of Commerce
500 Metro Square Bldg.
St. Paul, MN 55101

RE: MINNESOTA - NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION REGARDING PROPOSED RULES GOVERNING UNFAIR TRADE PRACTICES - MARKETING STANDARDS IN REGARD TO INSURANCE

Dear Mr. Gomsrud:

Pursuant to the above captioned, mentioned in the September 13, 1983 Minnesota Proposed Regulation Bulletin, I would greatly appreciate your forwarding me the subject matter of these rules.

Thank you for the attention given this matter.

Sincerely,

Linda L. Hurley
Counsel
Government Relations Department

LLH:ww

Mtg Sts

Michael A. Hatch
Commissioner

October 6, 1983

Mr. Charlie Singer
Minnesota Legal Services Coalition
700 Minnesota Building
46 East Fourth Street
St. Paul, MN. 55101

Dear Mr. Singer:

We are in the process of preparing a final draft of proposed rules governing unfair trade practices and marketing standards in regard to insurance. I would appreciate hearing any comments you might have regarding the proposed rules.

Could you attend a meeting in my office at 2:00 on Monday, October 10, to discuss any comments you might have.

Thank you.

Very truly yours,

Michael A. Hatch

MAH:nl

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
500 Metro Square Building, St. Paul, Minnesota 55101

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ARLIN B. WAELTI
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WOOD KIDNER
VIRGINIA M. LORD

WILLIAM C. KELLY (1918-1970)

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JOHN FORD EVANS, JR. •

• NOT MEMBER OF MINNESOTA BAR

October 10, 1983

Minnesota
9:15 am
OCT 11 1983
Department of Commerce

Commissioner Michael Hatch
State of Minnesota
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101

Re: Unfair Trade Practices
Part I: Marketing Standards

Dear Commissioner Hatch:

Thank you for the opportunity to meet with you last week and share Allstate's concerns about the proposed marketing regulations. As you requested, this letter is a follow-up in which we propose specific suggestions for rule amendments. These amendments are those of Allstate and we do not pretend that they encompass all concerns of all property and casualty insurers in Minnesota. Our suggestions for amendments are as follows:

1. Section VI B - 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 pay your hospital and surgical bills," "this policy will help fill some of the gaps that medicare and your present insurance leave out," "this policy will help to replace your income" (when used to express loss time benefits) or similar words and phrases, in a deceptive or misleading manner ~~which exaggerates~~ so as to exaggerate any benefits beyond the terms of the policy.

Note: This amendment alleviates Allstate's concern about certain words being outlawed per se. In light of the authority of Section II C. 1., this amendment does not diminish the regulatory impact of the rule.

2. Section VI E - The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," "without additional cost," or words of similar import, may not be used with respect to any benefit or service being made available with the policy unless true and accurate. An advertisement may specify the charge for a benefit or service or may state that a charge is included in the premium, or use other similar language.

3. Section VI H - Delete

Note: We urge that this provision be deleted in its entirety since the "evil to be remedied" is adequately addressed in VII A of the proposed rules.

4. Section VI R - An advertisement ~~explaining coverage~~ which states dollar amounts of benefits payable and premiums shall clearly indicate the provisions of any deductible under a policy.

5. Section VI Z - An advertisement shall not set out exceptions, reductions or limitations from a policy worded in a positive manner to imply that they are beneficial features such as describing a waiting period as a benefit builder. Words and phrases used to disclose exceptions, reductions or limitations shall fairly and accurately describe their negative features. The words "only," "miniumum," "just," or "merely" or similar words or phrases shall not be used to refer to exceptions, reductions or limitations in a manner which diminishes the significance of such exceptions, reductions, or limitations.

6. Section VI bb. - Devices such as ~~a safe driver's award and other such~~ awards shall not be used in connection with an advertisement. Not withstanding, safe driver's awards and other such awards may be used for advertisements for property and casualty insurance.

7. Section VI cc. - An advertisement shall not use an application which ~~resembles~~ is deceptively similar to paper currency, bonds, or stock certificates.

8. Section VII dd. - Delete in entirety

Note: In marketing the Sears Financial Network, considerable emphasis is placed on the convenience of "one stop shopping". Advertisements depicting the ease of applying for Allstate insurance while shopping at Sears are true in fact. This rule unneccesarily restricts the marketing of (thereby inhibiting the competition of) Sears integrated commercial/financial services network and in doing so, works to the detriment of the consumer.

9. Section VI ee. - An advertisement for accident and health insurance shall not employ devices which are designated to create undue fear or anxiety in the minds of those to whom they are directed.

Once again, thank you for your consideration of these suggestions. If you have any questions in this regard, please call Bill McGrann or myself.

Very truly yours,

Douglas J. Franzen

DJF:jj

cc: Mr. Richard Levenfeld
Allstate Insurance

Mlatg Stds

Michael A. Hatch
Commissioner

October 10, 1983

Mr. Douglas J. Franzen
O'Connor & Hannon
3800 IDS Center
Minneapolis, MN 55402

Mr. Ralph Marlatt
President
Minnesota Insurance Federation
1310 Pioneer Building
St. Paul, MN 55101

Mr. William Schlafge
Second Vice President
Minnesota Mutual Life
400 North Robert
St. Paul, MN. 55101

Gentlemen:

This letter shall confirm our conversation at the meeting where we reviewed the marketing rules.

While there were objections to the definition of "advertisement," as well as others, there appeared to be other objections to the use of uniform regulations applicable to all lines of insurance. Each of you felt that some rules were applicable only to some lines of insurance and, accordingly, there should be three separate sections within the rules delineating the guidelines between the following lines of insurance:

1. Accident and Health,

2. Life (and annuities),

3. Property and casualty.

It would appear that the delineation by section would apply to the following guidelines:

1. VI(b) through VI(ii)

2. VII(b)

Messrs Franzen, Marlatt, Schlafge October 10, 1983

Would you please send to me by the end of the week a listing as to which guidelines you think should not be applicable to a particular line of insurance. As we saw when we reviewed the rules, certain rules might not be applicable to property and casualty, but inclusion of property and casualty within the rules would not result in any further regulation. For instance, since property and casualty lines do not make the representations concerning "pre-existing conditions," that other lines make, the rules applicable to "pre-existing conditions" would not apply to property and casualty.

I frankly believe that separate sections would result in undue repetition of rules. If you can convince me otherwise, I would be willing to change the format.

Very truly yours,

Michael A. Hatch

MAH:ma

Minnesota Board on Aging
204 Metro Square
7th and Robert
St. Paul, Minnesota 55101
612/296-2770

October 10, 1983

Michael A. Hatch
Commissioner of Insurance
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

Re: Proposed Rules Governing Unfair Trade Practices in Regard to Insurance

Dear Commissioner Hatch:

I would like to commend your staff for their excellent work on Parts I, II, and III of the Unfair Trade Practices proposed rules.

I do have some suggestions on how the rules could be even further improved. My specific concern is how the rules will affect the sale of Medicare Supplement insurance to senior citizens.

Part I:Marketing Standards:

The proposed section II,C,2, provides:

> The policy of the Department of Commerce, in interpreting the meaning of these rules when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose and use of the advertisement, and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

I think that the second half of the sentence suggests that the rule will not be so strictly applied to advertisements where there is follow-up literature or a visit by an agent. If such advertisements "to invite inquiry" are treated differently, the difference should be that they are even more strictly scrutinized because of the greater sales pressure of a visit by an agent. I suggest that the rule be changed as follows:

October 10, 1983
Commissioner Hatch

> The policy of the Department of Commerce, in interpreting the meaning of these rules when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose and use of the advertisement. ~~and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to~~ Particularly strict standards will be applied to advertisements which invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.

In the alternative, I suggest that the second half of the sentence simply be deleted as follows:

> The policy of the Department of Commerce, in interpreting the meaning of these rules when applied to a specific advertisement, will be to take into consideration the content, detail, character, purpose and use of the advertisement. ~~and specifically, whether the advertisement is the direct or principal sales inducement, or whether its function is to invite inquiry for details of the insurance advertised, either by follow-up literature or by personal interview.~~

To the proposed section V, regarding suitability of policies, I suggest adding the following as second paragraph:

> In recommending the purchase of a Medicare Supplement policy, it is a violation of this section for an agent to make inaccurate statements about the Medicare or Medical Assistance programs or to represent that the agent understands such programs if the agent does not in fact have current, accurate knowledge of those programs.

I suggest the following additions to section VI, hh:

5. Contain a statement of the price of one year's coverage under the policy.

6. In any printed materials containing a description of benefits, arrange the types of benefits in two columns. Label one column: "These benefits are required by law to be provided by all 'One Plus' (or 'One,' 'Two,' etc.) Plans. If you already have a 'One Plus' Plan, you already have this benefit coverage." Label the other column: This benefit goes beyond what is required by law to be provided by all 'One Plus' Plans. You pay extra for this added benefit." In conjunction with each benefit beyond the legal minimum, in type or amount, for the plan classification of the policy, list the cost which that benefit adds to the cost of the policy, in the following form: "You pay extra for this added benefit. Of the $ one-year cost of this policy, you pay $ for this benefit.

October 10, 1983
Commissioner Hatch

7. Contain the following prominent statement:
SWITCHING POLICIES CAN BE DANGEROUS. COMPARE COSTS AND BENEFITS BEFORE SWITCHING FROM YOUR PRESENT INSURANCE POLICY. DO NOT SWITCH UNLESS YOU UNDERSTAND THE DIFFERENCES IN COVERAGE AND COSTS. IF YOU ARE CONFUSED, SEEK ADVICE FROM AN INDEPENDENT SOURCE -- SOMEONE OTHER THAN THIS INSURANCE COMPANY OR ITS AGENTS.

8. If the policy contains any "nursing home coverage," state specifically what is required for nursing home expense to be covered; for example, whether the home must be Medicare - certified; whether the coverage is only for "skilled nursing care" (if so define "skilled nursing care" and differentiate from "intermediate care" and state prominently that "intermediate care" is not covered); if the policy covers any care other than "skilled nursing care," state the actual average daily cost of such care and show the difference between that and the policy daily benefit.

Section IX, A, should be changed to make clear that the insurer, agents, and agency should all be identified, with addresses and phone numbers. I suggest that the section be changed as follows:

> The identity, address, and telephone number of the insurer, agents, and agency shall be made clear in all advertisements or representations, whether written or oral.

Part II: Agents:

Proposed rule 4 MCAR section 1.9016 should be changed as follows:

> Applications for insurance must bear the legible signature of the soliciting agent, and the name, address, and telephone number of the agency. In the case of brokerage business, applications must be signed by both the soliciting agent and the placing agent.

Proposed rule 4 MCAR section 1.9020, regarding suitability, should have the same additional paragraph as suggested for Section V of the Marketing Standards rule:

> In recommending the purchase of a Medicare Supplement policy, it is a violation of this section for an agent to make inaccurate statements about the Medicare or Medical Assistance programs or to represent that the agent understands such programs if the agent does not in fact have current, accurate knowledge of those programs.

Name Thacker, Paul Jr.

Post Office Amboy

County Blue Earth

Resigned

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~~Rosters~~

~~Invitations~~

Greg Peterson
Moss + Barnett
1200 Pills Ctr
MPLS 55402

Request for Notification of AG

CERTIFIED COLLATERAL CORPORATION

EXECUTIVE OFFICES:
SUITE 640
640 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60610
312-787-2640

COMPUTER FACILITIES:
FIFTH FLOOR
200 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601
312-726-8711

January 12, 1984

JAN 16 1984

Ms. Debbie Lindlief
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Ms. Lindlief:

Per the attached letter, I would like to be informed when the rules relating to insurance marketing standards are submitted to the Attorney General for his review. I would also like to receive a copy of the final rules as proposed for adoption.

Let me thank you in advance for your assistance.

Sincerely,

Glen Tullman

Glen E. Tullman

GET/lp
Enclosure

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Insurance Marketing Standards

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101.

Authority for the adoption of these rules is contained in Minnesota Statutes, chapters 60A and 72A. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Debbi Lindlief, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Debbi Lindlief at the above address.



Michael A. Hatch
Commissioner of Commerce

American Council of Life Insurance

1850 K Street, N.W.
Washington, D.C. 20006
(202) 862-4232

Robert J. Demichelis
Associate General Counsel

February 29, 1984

Ms. Debbi Lindlief
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Re: 4 MCAR §§ 1.9011-1.9028 — Insurance Agent Conduct
§§ 1.9420-1.9442 — Insurance Marketing Standards

Dear Ms. Lindlief:

I wish to be advised of the submission of the above-referenced material to the Attorney General and to receive a copy of the final rules submitted to the Attorney General. I would also appreciate receiving a Statement of Need and Reasonableness for each of the above rules and notification of final adoption of such rules.

Thank you for your cooperation.

Cordially,

Robert J. Demichelis

Robert J. Demichelis

RJD/cr