ALABAMA DEPARTMENT OF INSURANCE
ADMINISTRATIVE CODE

CHAPTER 482-1-013
DISABILITY INSURANCE ADVERTISEMENTS AND OTHER SIMILAR COVERAGES

482-1-013-Appendix **Interpretive Guidelines.**

ALABAMA INSURANCE DEPARTMENT

ADMINISTRATIVE CODE

APPENDIX A

INTERPRETIVE GUIDELINES

APPLICABLE TO

DISABILITY INSURANCE ADVERTISEMENTS

Section 1. Basic principles of interpretation

The proper promotion, sale and expansion of disability insurance are in the public interest. The rules are to be construed in a manner which does not unduly restrict, inhibit or retard such promotion, sale and expansion.

In applying the rules, it shall be recognized that advertising is essential in promoting a broader distribution of disability insurance. Advertising necessarily seeks to serve this purpose in various ways. Some advertisements are the direct or principal sales inducement and are designed to invite offers to contract. In other advertisements the function is to describe coverage broadly for the purpose of inviting inquiry for further information. Still other advertisements are solely for the purpose of promoting the interest of the reader in the concept of disability insurance or of promoting the insurer sponsoring the advertisement. The differences should be given recognition through interpretation of the rules.

Therefore, when applying the rules to a specific advertisement, it will be necessary to take into consideration the detail, character, purpose, use and entire content of the advertisement.

Section 2. Specific principles of interpretation

The chapter applies to group, blanket and individual disability insurance. Because the three differ widely in many respects, it follows that one interpretation will not always suffice for all three. When that is the case, a specific interpretation for group or blanket is set forth in these Guidelines. Some of the distinctions between individual, group and blanket that should be taken into account in applying the rules are:

A. Frequently, the prospective group or blanket policyholder is thoroughly conversant with insurance or employs competent insurance advisors.

B. Group plans are often the result of collective bargaining specifying the benefits where the plan must continue in existence for a specified period of time even though the insurance carrier may be changed.

C. Many group and blanket contracts are tailor-made to fit the policyholder's particular situation, and are the result of extensive negotiations.

D. Group insurance generally (and blanket at times) contemplates that all or part of the premium is to be paid by the policyholder.

E. The insurance provided by a group plan may be underwritten by several different insurers.

F. Much group insurance (and at times blanket) material is prepared and published after the contract is written.

Interpretation of Rule 482-1-013-.03(a)1.

Advertisements for the sole purpose of obtaining employees or producers are not to be considered an advertisement within the purview of the chapter.

Interpretation of Rule 482-1-013-.03(b)2.

The definition of the word "Advertisement" is intended to include material used in the solicitation of renewals and reinstatements except for communications or notices which mention the cost of the insurance but do not describe benefits. It does not include: material in house organs of insurers; communications within an insurer's own organization not intended for dissemination to the public; individual communications of a personal nature; nor correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket policy.

With respect to existing groups, reprints of group or blanket booklets after the effective date of the chapter shall be considered within the definition of an advertisement; however, until January 1, 1973, insurance companies may use currently printed group or blanket booklets.

A general announcement from a group or blanket policyholder to eligible individuals that a contract has been written is not intended to be an advertisement within the meaning of the rules if it clearly indicates that it is preliminary to the issuance or release of a booklet.

Interpretation of Rule 482-1-013-.03(a)3.

Materials to be used solely by an insurer for the training and education of its employees or producers are not within the purview of the rules.

Interpretation of Rule 482-1-013-.03(b).

The language in Rule 482-1-013-.03(b) "…except disability and double indemnity benefits included in life and annuity contracts…" shall be interpreted to mean except disability and double indemnity benefits included in life insurance, endowment or annuity contracts or contracts supplemental thereto which contain only such provisions relating to disability insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

Interpretation of Rules 482-1-013-.03(c) and (d).

Rule 482-1-013-.03(c) refers to Section 27-1-2(2), which reads as follows:

"INSURER. Every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance."

An insurer shall require its producers and any other person or agency authorized to act on its behalf in preparing advertising material to submit proposed advertisements to the insurer for approval by the insurer prior to use by the producer or any other person or organization on behalf of the insurer.

Interpretation of Rule 482-1-013-.04.

The purpose of the first sentence of Rule 482-1-013-.04 is twofold. First, it states the general purpose of the chapter by prohibiting advertisements which are not only false but which may mislead either in fact or by implication. It does for instance recognize that advertisements may be misleading even though literally true and capable of proof. Secondly, it establishes a broad principle designed to prohibit untruthful and misleading advertisements in addition to those principles covered by specific rules of the chapter. To that extent it may be considered a "catch-all" rule.

The second sentence of this rule is intended to prohibit the use of incomplete statements and words or phrases which, because of the reader's unfamiliarity with insurance terminology, have the tendency and capacity to mislead or deceive. It places no prohibition on the use of any particular words or phrases but does require that all terminology used in an advertisement, whether it be insurance terminology or otherwise, be sufficiently clear so as to avoid being misleading. In interpreting this particular portion of Rule 482-1-013-.04, it must be recognized that insurance terminology is often essential to properly explain the coverage being advertised.

As a general principle, words or phrases which are commonly understood by the public with respect to insurance, for example, such words or phrases as premiums, policies, contracts, reinstatement, lapse, grace period, capital, assets, investments, legal reserve, insurer, insured, policyholders, insurance company and insurance, usually need not be further clarified in the context of the advertisement. However, certain words or phrases may, unless adequately clarified in the context of the advertisement, mislead those who are not familiar with insurance terminology.

Interpretation of Rule 482-1-013-.05, Generally

To interpret Rule 482-1-013-.05 properly, it is necessary, first, to distinguish between Paragraphs (1) and (2). Generally, the purpose of Paragraph (1) is to prevent an insurer from exaggerating the extent of policy benefits or minimizing cost by using phraseology which either overstates benefits or is so incomplete as to leave an exaggerated idea of benefits in the mind of the reader. The first sentence of the Paragraph and Explanations 1 and 2 prohibit and explain exaggeration by overstatement. The second sentence of the paragraph and

Explanations 3 and 4 prohibit and explain exaggeration by incompleteness.

Paragraph (2) extends this principle of "no exaggeration." In essence it states that in certain types of advertisements the only way that exaggeration of benefits can be avoided is to set forth in the same advertisements certain of the limitations, exceptions and reductions affecting the benefits described.

Paragraph (1) applies to any advertisement which discusses benefits. Paragraph (2) applies only to an advertisement which discusses benefits to the extent of mentioning the dollar amount or time limit of the benefits or cost of the policy or benefits thereunder.

Because the basic purpose of both paragraphs is the same – to prevent exaggeration – they must necessarily overlap at times. For example: In advertising a policy which contains an aggregate benefit limit, it would be improper to use alone the phrase, "no limit on the number of claims" because the second sentence of Paragraph (1) requires completion of the statement in some manner like "no limit on the number of claims until the aggregate amount X dollars has been paid." If elsewhere the advertisement contains a discussion of dollar amount or time limit of benefits or cost of the policy or its benefits, Paragraph (2) requires that the aggregate amount be set forth because it is an important "limitation." Therefore, in this example, the aggregate amount should be set out because both Paragraphs (1) and (2) require it.

The distinction between Paragraphs (1) and (2) can best be explained as follows: Paragraph (1) is only concerned with phraseology of benefit descriptions in an advertisement. Paragraph (2) is not primarily concerned with phraseology but, in advertisements to which it applies, in having certain limitations, exceptions and reductions set forth. It is simply coincidental that to meet the phraseology requirements of Paragraph (1) it may sometimes be necessary to describe a limitation, exception or reduction.

Interpretation of Rule 482-1-013-.05(1), Specifically

In interpreting Paragraph (1) of Rule 482-1-013-.05 the following shall be observed:

A. Language which states or implies that a certain age group or groups are eligible for coverage when such is not the fact is unacceptable.

B. Language which states or implies that each member under a "family" contract is covered as to the maximum benefits advertised when such is not the fact is unacceptable.

C. Advertisements which indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of people are unacceptable if in the issuance of policies such distinctions are not maintained. An advertisement shall not use the phrase "at surprisingly low cost" or the phrase "at low rates."

D. The importance of disease rarely or never found in the class of persons to whom the policy is offered shall not be exaggerated in an advertisement.

E. Paragraph (1) applies to "limited" benefit type policies and dread disease policies and benefits. The term "limited" is to be given the connotation it usually receives in the industry. A limited benefit-type policy should be identified as such when advertised by disclosure of its limited character. For example, automobile, air and railroad travel policy advertisements should disclose that they are limited to accidents resulting from automobile, air or railroad travel, as the case may be, as well as the limited manner in which the accident must occur, including any unusual conditions. Advertising of policies which are specifically tailored to augment benefits available to Medicare insureds should disclose in unmistakable language what Medicare benefits the policy is designed to supplement, e.g., hospital benefits only and further which Medicare benefits it will not supplement, e.g., does not pay doctors bills. Advertising of dread disease policies shall not exaggerate the maximum amounts payable and must explain in juxtaposition with the maximum amounts the limitations and conditions applicable to the payment of such maximum amounts. The maximum amount or amounts shall not be used as a lead or as a caption in such advertisements.

F. Examples of what benefits may be paid under a policy shall not disclose only maximum benefits unless such maximum benefits are paid for losses from common and probable illness rather than exception or rare illnesses.

G. When a range of hospital room rate benefits is set forth in an advertisement, it must be made clear that the insured will receive only the room rate benefit written or printed in the policy selected. Language which implies that the insured may select his room rate benefit at the time of hospitalization is unacceptable.

H. Language which implies 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, is unacceptable.

I. The term "confining sickness" is an abbreviated expression and in the case of either lifetime benefits or benefits for shorter periods the term must be explained in the advertisement. An example of an acceptable explanation would be: "Benefits are payable for total disability due to confining sickness only so long as the insured is necessarily confined indoors." Captions such as "Lifetime Sickness Benefits" or "Five Year Sickness Benefits" are incomplete if such benefits are subject to confinement requirements. When sickness benefits are subject to confinement requirement, captions such as "Lifetime Confining Sickness Benefits" or "Five Year Confining Sickness Benefits" would be acceptable.

J. An advertisement of hospital or medical benefits shall not state that "benefits are payable directly to you," or words of similar import, without indicating that benefits may be assigned. The phrase "benefits are payable directly to you unless assigned by you" or "benefits are payable directly to you or to your assignee" is acceptable.

K. An advertisement shall not indicate that the benefits of an individual policy are "payable in addition to other insurance" without indicating the limitations and exceptions applicable. If the phrase "payable in addition to other insurance," or a phrase of similar import, is used, additional explanatory statements must follow in close conjunction specifying any exception or limitation to the statement, such as Workers' Compensation or other

exceptions in the policy. The phrase "benefits under this policy are payable without regard to other insurance which you may have" is acceptable.

L. An advertisement of a Major Medical Policy or a Catastrophic policy shall clearly indicate the provisions of any deductible.

M. The phrase "The Doctors Hospital Plan" or "The Doctors Plan," or words of similar import, implies that a plan of benefits has been endorsed by doctors in the community, is misleading, and shall not be used, unless it has been so endorsed and, if so endorsed, it shall indicate specifically the name of the state or county medical association or society which has endorsed the plan. The fact that one or more doctors are on the Board of Directors of the insurer offering the benefits does not cure the misleading nature of such statements as to plans which have not been endorsed by such a state or county medical association or society.

N. The following are specific examples of the type of advertising prohibited or permitted by Paragraph (1):

1. Advertisements shall not state that the insurer -

- "pays hospital, surgical, etc., bills,"
- "pays dollars to offset the cost of medical care,"
- "safeguards your standard of living,"
- "pays full coverage" or "pays complete coverage,"
- "pays for financial needs,"
- "provides for replacement of your lost paycheck,"

unless the statement in each instance is literally true. Where appropriate, such or similar words or phrases may properly be used if preceded by the words "help," "aid," "assist" or similar words or phrases.

2. Advertisements shall not emphasize the total amounts payable under hospital indemnity coverage or other benefits in such policy, such as benefits for private duty nursing, unless it provides with substantially equal prominence and in close conjunction with such statements the actual amounts payable per day for such indemnity or benefit.

O. Advertisements which state that the premiums will not be changed in the future are not acceptable, unless such is the fact.

P. Any solicitation which states or implies immediate coverage or guaranteed issuance of a policy shall be made only if suitable administrative procedures exist so that the policy is issued within a reasonable time after the application is received.

Interpretation of Rule 482-1-013-.05(2), Specifically

That part of Paragraph (2) of Rule 482-1-013-.05 which reads as follows: "When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, . . ." defines the type of advertisement which must meet the requirements set forth in the remaining language of the rule.

The words "dollar amount" appearing above should be interpreted as meaning "dollar amount of benefits."

It is possible to have an advertisement which does not specifically mention dollar, time or cost, but accomplishes the same objective by indirection. For example, if there were a hospital and surgical expense policy which paid all incidental hospital expenses, it might be advertised as follows: "When you are covered under our hospital and surgical expense policy, we pay all your incidental hospital expenses." Or an advertisement of a major medical expense policy may offer to pay a specified percentage, such as 75% of hospital, medical and surgical expenses in excess of the deductible. In both of these examples, language is employed which is sufficiently specific to disclose to the reader the dollar amount to which he may become entitled. The language of the rule mentioned above: "Specific policy benefit or

the loss for which such benefit is payable" was inserted to describe this type of advertisement.

As was noted in the "Basic Principles of Interpretation" advertisements generally fall within three categories. To properly apply the philosophy expressed in the first paragraph of the "Basic Principles," the meaning of Paragraph (2) must be examined in the light of each category. The first category of advertisements includes those which are the direct or principal sales inducements and are designed to invite offers to contract, i.e., clearly attempt to persuade the reader or listener to purchase the policy or policies advertised. When such an advertisement mentions dollar amount or time limit of benefits or cost of policy or policy benefits, it is always subject to the limitations imposed by the mandatory portion of Paragraph (2).

The second category of advertisements includes those designed to attract the reader's interest in the policy or policies advertised so that he will inquire for further details and information. This type of advertisement usually describes benefits broadly. It may make some mention of dollar amount, time limits or cost. Such mention, however, does not in itself mean that the requirements of Paragraph (2) are applicable if the advertisement clearly falls within the category of an invitation to inquire.

To illustrate the foregoing: A brief television commercial or a direct mail card may state, "X Company invites you to inquire for full information about their $14 a day hospital expense policy." This advertisement is obviously not in the first category, an invitation to contract, but rather in the second category, an invitation to inquire. The viewer or reader could not reasonably decide to purchase the policy described on the basis of the information given even though it does mention a dollar amount.

But suppose the advertisement states, "X Company invites you to inquire for full information about its $14 a day hospital expense policy which will cost you only $.04 a day." Unlike the first example, it is more than a mere invitation to inquire for further details and should fall within the scope of Paragraph (2). The distinction between the two advertisements is plain if it is borne in mind, in the examples given, that at least two kinds of information are needed by a prospective purchaser to determine whether he wishes to buy. He needs to know (1) what he

will get, and (2) what it will cost. If he only knows what he will get without knowing the cost or if he knows only what he must pay without knowing what he will get, his only reasonable course is to seek further information. The principle followed in the above examples is that if those advertisements which fall within the category of an invitation to inquire withhold some facts without which no one could reasonably decide to buy the policies advertised, such advertisements are not subject to the limitations imposed by Paragraph (2). It should be recognized that there is no single conclusive test and that each advertisement is weighed individually.

It is also true that if the description of dollar time or cost is merely for the purpose of identifying the policy, Paragraph (2) should not apply. Conversely, if the mention of dollar, time or cost is for the purpose of doing more than identifying the policy, Paragraph (2) may apply.

Thus it can be seen that some advertisements falling within the "invitation to inquire" category are generally not subject to the requirements of Paragraph (2) but, as has been shown, there will be times when their language is such as to make compliance with Paragraph (2) necessary.

The third category of advertisements includes those of an "institutional" type which is designed primarily to advertise the existence and operations of the insurer. Rarely is it likely that dollar amounts, time limits, or cost will be mentioned in this class of advertising. Paragraph (2), therefore, has little or no application to advertisements in this category.

The phrase "no medical examination required" and phrases of similar import referred to in Paragraph (2)(b)5 may be used, provided that (1) they are modified to indicate that they apply only to the issuance of the policy or both issuance of the policy and payment of claims, whichever the case may be (e.g., "No medical examination required to apply"; "No medical examination to apply for the policy or any benefits"; "No age limit") and, (2) additional wording is included in close conjunction with the phrases to clearly indicate any applicable time period following the effective date of the policy during which losses traceable to pre-existing conditions are not covered (e.g., "pre-existing conditions not covered during first ____ years the policy is in force.")

We turn now to consideration of the mandatory portion of Paragraph (2) which reads as follows:

". . . it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive."

Where Paragraph (2) applies, it is clear that it is not necessary to disclose all exceptions, reductions, and limitations. The following are examples of exceptions, reductions and limitations that generally do affect the basic provisions and "without which the advertisement would have the capacity and tendency to mislead or deceive." Also included are examples of those that generally are not of sufficient significance to affect the basic provisions or to mislead if omitted. The lists are not intended to be complete and the advertiser should use the list as a guide in determining the character of exceptions, reductions and limitations that do not appear.

GENERALLY DO AFFECT THE BASIC PROVISIONS AND WITHOUT WHICH THE ADVERTISEMENT WOULD HAVE THE CAPACITY AND TENDENCY TO MISLEAD OR DECEIVE

1. War or act of war

2. While in armed services

3. Territorial restriction on coverage within the U.S. and Canada

4. Complete aviation exclusion

5. Self-inflicted injury

6. Injury inflicted by another person

7. Time limitation on death, dismemberment or commencement of disability following an accident

8. Pre-existing sickness or disease

9. Exclusion or reduction for loss due to pre-existing bodily infirmities

10. Exclusion or reduction for loss due to specific diseases, classes of diseases or types of injuries

11. Confinement restrictions in disability policies such as house confinement, bed confinement and confinement to the premises

12. Waiting periods

13. Reduction in benefits because of age

14. Any reduction in benefit during a period of disability

15. Workers’ compensation or employers' liability law exclusion

16. Occupational exclusion

17. Violation of law

18. Automatic benefit in lieu of another benefit

19. Confinement in government hospital

20. Maternity

21. Miscarriage in accident and sickness policy

22. Restrictions relating to organs not common to both sexes

23. Restrictions on number of hospital hours before benefit accrues

24. Insanity, mental diseases or disorders, or nervous disorder

25. Dental treatment, surgery or procedures

26. Cosmetic surgery

27. While intoxicated or under the influence of narcotics, or other language not in conformity with the Uniform Policy Provisions Law

28. Unemployed persons

29. Retired persons

30. While handling explosives or chemical compounds

31. While or as a result of participating in speed contests

32. While or as a result of riding a motorcycle or motorcycle attachment

33. While or as a result of participating in professional athletics

34. While or as a result of participating in certain specified sports

35. While or as a result of serving as a volunteer fireman or in other hazardous occupations

36. Riot or while participating in a riot

37. Ptomaine poisoning

38. Gas or poisonous vapor

39. Sunstroke or heat prostration

40. Freezing

41. Poison ivy or fungus infection

42. Requirement of permanent disability

43. Elimination periods

GENERALLY DO NOT AFFECT THE BASIC PROVISIONS AND WITHOUT WHICH THE ADVERTISEMENT WOULD NOT HAVE THE CAPACITY AND TENDENCY TO MISLEAD OR DECEIVE

1. Suicide, sane or insane

2. Attempted suicide, sane or insane

3. Intentional self-inflicted injury

4. Territorial restriction with no limitation of coverage in the U.S. and Canada

5. Aviation exclusion, except as passenger on commercial airlines

6. Felony or illegal occupation

7. All statutory Uniform Policy Provisions, both mandatory and optional

8. Requirement for regular care by a physician

9. Definition of total disability

10. Definition of partial disability

11. Definition of hospital

12. Definition of specific total loss

13. Definition of injury

14. Definition of physician or surgeon

15. Definition of nurse

16. Definition of recurrent disability

17. Definition of commercial air travel

18. Definition of classifying hernia as a sickness

19. Rest cures

20. Diagnoses

21. Prosthetics

22. Cosmetic surgery, except as a result of accident occurring while policy is in force

23. Dental treatment, surgery or procedures, except for injury to sound natural teeth occurring while policy is in force

24. Bacterial infection, except pyogenic infection occurring through cut or wound caused by injury

25. Eye examination for fitting of glasses or hearing aids

26. Exclusion of sickness or disease in a policy providing only accident coverage

27. Exclusion for miscarriage in policy providing only accident coverage

Some advertisements of the first category relating to hospital indemnity coverage when used in newspaper and magazine advertising, which contain an application form or otherwise invite offers to contract, may disclose exceptions, reductions or limitations as required by Paragraph (2), but the advertisement is so lengthy as to obscure the disclosure of the pre-existing condition exclusion, the limitation on the payment of benefits for the first _____ days of hospital confinement, if any, or the fact that the policy does not pay physician's benefits. In such circumstances special emphasis shall be given to such applicable exceptions, reductions or limitations in a prominent or clearly noticeable area in such advertisement.

Interpretation of Rule 482-1-013-.06

Rule 482-1-013-.06 is divided into two parts. The first part defines the type of advertisement that is subject to the restrictions imposed upon such advertisement by the second part.

The first part of Rule 482-1-013-.06 reads as follows:

"An advertisement which refers to renewability, cancellability 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…"

Three distinct categories of advertisements are described:

In the first category is that type of advertisement "which refers to renewability, cancellability or termination of a policy." This language was inserted in the rule to prevent the advertisement of a non-cancellable policy or guaranteed renewable insurance policy in such a manner as to over-state the non-cancellable or guaranteed renewable feature. For example, suppose a non-cancellable and guaranteed renewable to age 65, at a level premium, loss-of-time policy was advertised briefly in the following manner: "X company sells a non-cancellable loss-of-time benefits policy." In this simple advertisement the insurer has chosen to discuss renewability or as the rule puts it "refers to renewability," etc. It is, therefore, bound by the provisions of Rule 482-1-013-.06 and the language of its advertisement would have to read something like: "X company sells a non-cancellable and guaranteed renewable to age 65 loss-of-time benefits policy." Statements like "This policy safeguards your renewal" or "Yours for as long as you want it" are further examples of advertisements which refer to renewability so as to make them subject to the limitation imposed by Rule 482-1-013-.06. It is important to note that the restriction applies only to advertisements of specific policies.

In the second category is that type of advertisement "which refers to a policy benefit." In determining what is meant by the phrase "refers to a policy benefit," we must keep in mind the "Basic Principles of Interpretation." It will be recalled that these principles divide advertisements into three classes: "offers to contract," "invitations to inquire" and "institutional advertisements."

"Offers to contract" invariably describe benefits in considerable detail because their purpose is to convince the reader that he should purchase the policy described. This type of advertisement is always subject to the requirements of Rule 482-1-013-.06.

"Invitations to inquire" are designed to attract the reader's interest in the policy so that he will inquire as to further

details and information. Often these are brief advertisements used in television and radio commercials, pre-call letters, newspapers or magazines. The limitations imposed by Rule 482-1-013-.06 shall apply to this type of advertisement to the same extent that the limitations imposed by Rule 482-1-013-.05(2) were found to apply to them. In other words, the language of the rule "refers to a policy benefit" should be interpreted to mean that an "invitation to inquire" which discusses dollar, time or cost extensively is subject to the limitations imposed by Rule 482-1-013-.06. If, however, the mention of dollar, time or cost is such that the advertisement withholds some facts without which no one could reasonably decide to buy the policies advertised, the advertisement is not subject to the limitations imposed by Rule 482-1-013-.06. This is an application to Rule 482-1-013-.06 of the principle established in the interpretation of Rule 482-1-013-.05(1).

The third class outlined in the Basic Principles of Interpretation is the institutional type advertisement. It is unlikely that this type of advertisement will ever be subject to Rule 482-1-013-.06 unless it "refers to renewability," etc., of a specific policy. As was discussed in an earlier paragraph, it should be remembered that every advertisement, regardless of its class, is always subject to Rule 482-1-013-.06 if it refers "to renewability, cancellability or termination of a policy."

In the third category is that type of advertisement "which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy."

There are advertisements which do not "refer to renewability," etc., nor "refer to a policy benefit" but nevertheless are subject to Rule 482-1-013-.06.

These are advertisements which imply permanency by a discussion of age. For example, an advertisement of a cancellable policy may say: "Coverage – Ages 18 to 70," or "does not terminate at any specific age – no reduction in benefits as you grow older." Although technically truthful when standing alone, the above type of statement in an advertisement may imply permanency unless properly qualified. It is not the intent of the chapter, however, to bring all statements about eligibility age under Rule 482-1-013-.06, but only those statements which have the tendency and capacity to mislead as to the permanence and continuability of the protection. Simple statements disclosing

the company's underwriting policy with respect to age such as "issued to people between the ages of 55 and 65" do not bring the advertisement under Rule 482-1-013-.06. It is essential for the advertiser to use words in describing the issue ages which cannot be construed to imply that the ages refer to renewability. One example has been given. Another approach would be to say something like, "For sale to persons between 18 and 59 years of age."

This completes a determination of the type of advertisement subject to Rule 482-1-013-.06. The remainder of Rule 482-1-013-.06 relates to compliance and reads as follows:

"…shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums, because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions."

The word "provisions" used above does not contemplate that the policy language must be used. Rather, the rule requires a summary of the pertinent information with respect to renewability, etc. This word was used merely to distinguish it from the word "conditions" used later in the paragraph.

In applying Rule 482-1-013-.06, the advertiser of a cancellable or optional-renewal policy is concerned only with the requirement that a summary of policy renewal provisions be set forth and is not concerned with that part of the rule which deals with "qualifying conditions." Advertisements of cancellable policies that come under Rule 482-1-013-.06 must state that the contract in question is cancellable or renewable at the option of the company, as the case may be. For example, a policy which is cancellable should be advertised in a manner similar to, "This policy can be cancelled by the company at any time." Policies which are renewable at the company's option should be advertised in a manner similar to, "Renewable at the option of the company," or "The company has the right to refuse renewal of this policy" or "The acceptance of a renewal premium is optional with the company."

With respect to the non-cancellable or guaranteed renewable type policy, the rule requires two things: first, that a summary

of the policy provisions with respect to renewability be set forth and, second, that anything that modifies the permanent character of the policy be set forth. The disclosure of provisions relating to renewability, etc., will require the use of language such as "non-cancellable," "guaranteed renewable," "non-cancellable and guaranteed renewable" or "renewable at the option of the insured."

In addition to the requirement for disclosure of "provisions relating to renewability," etc., the rule requires a statement of the qualifying conditions which constitute limitations on the permanent nature of the coverage. These customarily fall into three categories: (1) age limits, (2) reservation of a right to change premiums and (3) the establishment of aggregate limits. For example, "non-cancellable and guaranteed renewable" does not fulfill the requirement of Rule 482-1-013-.06. If the policy contains a terminal insurance age of 65, a proper statement would be, "non-cancellable and guaranteed renewable to age 65." An advertisement is not required to distinguish among terminations (a) on the insured's birthday, (b) on the policy anniversary nearest or following such date, (c) on the premium date following such date, or (d) any similar method of defining the termination date. If a right to change premiums is reserved, the statement must be amplified to language similar to, "guaranteed renewable to age 65 but the company reserves the right to change premium rates on a class basis." If the contract contains an aggregate limit after which no further benefits are payable, the above statement must be amplified with the phrase, "subject to maximum dollar amounts payable by the company as set out in the policy," or similar language. It should be borne in mind that one policy may have one or more of the three basic limitations and others. The advertisement must show those which the policy contains.

In addition to the above basic requirements, the necessitates a disclosure of "…any modification of benefits, losses covered or premiums because of age or for other reasons…" Because of the context of the rule as a whole, this must be interpreted to mean only "modification of benefits," etc., which detract from the permanent nature of the coverage being offered. In other words, the rule is not a repetition of Rule 482-1-013-.05(2). which requires the setting forth of certain limitations, exceptions, and reductions when an advertisement describes benefits extensively. Rather, Rule 482-1-013-.06, under certain circumstances, requires only the description of those limitations which directly affect the permanent nature of the policy. For example, a provision for modification of benefits or increase of premium on account of change of occupation does not affect the permanent nature of the policy and, therefore, is not required to be disclosed by Rule 482-1-013-.06. Another example of a modification of benefits which does not affect the permanent nature of the coverage is a

terminal reduction, i.e., a provision for the termination of benefit payments at or about the terminal age (65 for example); however, it is subject to the requirements of Rule 482-1-013-.05.

On the other hand, provisions for reduction of benefits at stated ages, other than terminal reductions, would have to be set forth because such a reduction does affect the permanent nature of the coverage. For example, a policy may contain a provision which reduces benefits 50% after age 50 although it is renewable at age 65. Such a reduction would have to be set forth. Also, a provision for the elimination of certain hazards at any specific ages or after the policy has been in force for a specified time affects the permanent nature of the coverage and would have to be set forth. In this same category is the policy which provides for a stepped-up premium periodically. This, too, affects the permanency of coverage and would have to be set forth.

The foregoing is related to the type of advertisements subject to Rule 482-1-013-.06 and what must be disclosed. The remainder of this interpretation relates to how the qualifying conditions must be disclosed. The language of the rule reads:

"…in a manner which shall not minimize or render obscure the qualifying conditions."

The qualifying conditions should be set forth with the language describing renewability. For example, "non-cancellable and guaranteed renewable to age 65." In this example, "to age 65" is properly stated with the words "Non-cancellable and guaranteed renewable."

It should be mentioned that when Rule 482-1-013-.06 requires that an advertisement state the terminal age of a permanent type policy, the statement of the age limit in the advertisement does not of itself bring the advertisement under Rule 482-1-013-.05(2).

In an advertisement of a group plan, subject to Rule 482-1-013-.06, it is not necessary to describe the terms of the policy concerning cancellability or non-renewability but the certificate holder must be advised therein that during the continuance of the contract his benefits are contingent upon his continued employment with the employer or membership in the group.

Interpretation of Rule 482-1-013-.07

The purpose of this rule is to assure that all information required to be disclosed by the chapter will be disclosed under one of two alternative methods in such a manner that the arrangement of the material itself will not have the capacity and tendency to confuse or mislead.

The first alternative permits the disclosure of exceptions, limitations, reductions and other restrictions either in the description of a specific benefit to which they relate or in a paragraph set out in close conjunction with the description of specific policy benefits. An example of incorporating a reduction in the description of a specific policy benefit follows:

$200.00 per month will be paid during total disability, beginning with the first day of such disability for as long as 24 months. Benefits are reduced 50 per cent for disability commencing after attainment of age 65.

An example of incorporating exceptions, limitations, reductions and other restrictions in a paragraph set out in close conjunction with the description of specific policy benefits follows:

THIS PLAN WILL PAY YOU

Accident Benefits

$1,000.00 for accidental death.

$ 200.00 per month for total disability, beginning with the first day of such disability for as long as 5 years.

$ 100.00 per month for partial disability, beginning with the first day of such disability or immediately following total disability for as long as 6 months.

Sickness Benefits

$ 200.00 per month for total disability, beginning with the 8th day of such disability for as long as 2 years.

Hospital and Surgical Benefits

$ 20.00 per day during hospital confinement from first day of such confinement for as long as 90 days.

$10.00 to $300.00 under comprehensive surgical schedule specifying the maximum payment for each operation listed. The maximum payment will vary depending upon the nature of your operation.

Total premium $ _____ per _____

The benefits described do not cover injury or disease: (1) existing before the policy date; (2) caused by war; or (3) occurring or commencing while in the Armed Forces.

The acceptance of a renewal premium is optional with the Company. Benefits payable are reduced 50% for disability commencing or loss occurring after attainment of 65.

The second alternative would permit the disclosure of exceptions, limitations, reductions and other restrictions in some portion of the advertisement which is not in close conjunction with the provisions describing specific policy benefits, provided they were properly captioned.

For example, assuming that the last two paragraphs of the preceding example were separated from the description of the specific policy benefits by other material so as not to be in close conjunction with the benefit descriptions, then such paragraphs would have to be appropriately captioned as follows:

Exceptions - Limitations

The benefits described do not cover injury or disease: (1) existing before the policy date; (2) caused by war; or (3) occurring or commencing while in the Armed Forces.

The acceptance of a renewal premium is optional with the Company. Benefits payable are reduced 50% for disability commencing or loss occurring after attainment of age 65.

The particular caption used above need not be used. For example, instead of the caption "Exceptions - Limitations," you might use "Exceptions," "Exclusions," "Not Covered," "Restrictions," "Extent of Coverage," or any other caption or combination of captions which would serve as notice of the exceptions, limitations or reductions from policy coverage.

An example of incorporating the amounts payable per day under a hospital indemnity policy which sets forth the total amount of indemnity payable would be: "This policy provides benefits in the amount of $600 per month at the rate of $20 per day when confined in a hospital." If the hospital indemnity benefit is subject to an elimination period, the advertisement shall specify the number of days of elimination.

Because of the different types of advertising media used to sell and promote disability insurance and the tremendous number

and variety of techniques employed in each media, it was not practical to establish minimum and maximum requirements with respect to the size and style of type. Therefore, the "equal prominence" test was not employed in the chapter, nor should it be applied in the interpretation of the chapter other than as specifically so provided in these Interpretive Guidelines.

In summary, the purpose of this rule is to make certain that the information required to be disclosed is presented clearly and in such a manner as to readily be noticed.

Interpretation of Rule 482-1-013-.08

The purpose of this rule is to establish certain requirements to be observed when using either testimonials or endorsements in advertisements. All testimonials must be genuine, not fictitious. Under this rule, the manufacturing or unscrupulous editing or "doctoring up" of a testimonial is clearly prohibited as being false and misleading under this rule.

If the person making either a testimonial or an endorsement has either (1) a substantial financial interest in the insurer; or (2) is a member of one or more Boards of Directors of the organization; or (3) has been compensated for the endorsement or to include a testimonial, the advertisement shall clearly disclose such information.

A "testimonial" is certifying to a thing of value and is given as an expression of gratitude. An "endorsement" is the act of giving one's name or support to a product for compensation either directly or indirectly. A pleased claimant who without inducement by compensation writes a letter of commendation for a prompt or fair claim settlement, or if such claimant gives voice to a radio commercial, or provides a TV commercial, is giving a testimonial. A celebrity who is featured in a newspaper or other printed advertisement or in a radio or TV commercial is lending his name to the promotion of the insurance product and it is an endorsement for compensation. A third category is the person who is pursuing a broadcasting career and merely reads commercially prepared scripts on products.

It is recognized that unions require that any "actors" be paid "scale" wages, even if it is pleased claimant or policyholder, and it is recognized, if a radio or TV commercial is rerun a substantial number of times, the total compensation may be considered by some persons to be substantial; however, this rule does not require the advertisement-testimonial to disclose either the payment of such "scale" wages required by union rules or the payment of a nominal compensation to an unknown claimant or policyholder for permission to publish the testimonial, unless the compensation is offered to induce the testimonial.

"Endorsements" by celebrities are in a different category. Celebrities are paid directly or indirectly substantial sums for their endorsements. The advertisements shall clearly disclose such fact. Disclosure may be adequate without using the phrase "has been paid" or similar words. The phrase "has been retained as a marketing consultant" and other similar phrases are acceptable. This requirement does not apply when it is obvious that the insurer is the sponsor of all or a portion of a TV or radio program other than the insurance advertisement portion of the program.

A radio or TV announcer may be subject to the requirements of the preceding paragraph, depending upon (1) the context of the advertisement; (2) whether the statement is an endorsement or a testimonial; (3) whether the announcer is a celebrity; and (4) the amount of the compensation.

A testimonial must represent the current opinion of the author. When a testimonial is submitted in good faith, setting forth appreciation for benefits and favorable treatment received from an insurer, it follows, as a natural corollary, that the use of such testimonial must be limited to those instances where the testimonial, no matter when written, is still representative of the current opinion of the author. In other words, at the time of publication, the author should still believe what he had originally stated. The purpose of this requirement is to eliminate, as misleading, the use of testimonials in those cases where it is reasonable to presume that the views expressed in the testimonial do not correctly reflect current opinion of the author. It is conceivable that the writer of a testimonial, for one reason or another, might change his mind and no longer entertain the views originally expressed. This does not mean, per se, that an insurer, in each instance, is required to check with the author each time his testimonial is used to ascertain that the views expressed have not altered; but an insurer may not use a testimonial when it has information indicating a substantial

change of view on the part of the author. A testimonial should be checked before use in those instances when a change of views might be probable or reasonable to assume, particularly by virtue of the passage of a considerable period of time. In this connection an insurer should not use a testimonial for more than two years after the date it is originally given or following a prior confirmation without obtaining a confirmation from the author that the testimonial represents his then current opinion.

This rule, furthermore, prohibits testimonials which do not correctly reflect the present practices of the insurer. In other words, a testimonial even though recently written and otherwise usable under this rule, cannot be used if its statements describe practices no longer followed by the insurer. Such a testimonial would clearly be misleading.

A further possible misuse of testimonials is prohibited under the part of Rule 482-1-013-.08 in which it is required that the testimonial must be applicable to the policy or benefit being advertised. This is intended to eliminate the using of a testimonial given in connection with one policy to advertise another policy where such use would be misleading. This, of course, does not apply to testimonials of a general nature in which the author express appreciation for courteous treatment received, the prompt payment of benefits, and so forth.

Finally, this rule states that the testimonial must be accurately reproduced. Any change or omission which distorts the plain meaning or intent of the testimonial as originally written is prohibited. However, a testimonial need not stand or fall in its entirety as originally written. Certainly if a testimonial should reveal information of a personal nature or contain a statement that is not absolutely correct insofar as company procedures or practices are concerned, an insurer may omit such matter from a testimonial and then use the residual matter in its advertising, provided, of course, that in so doing, the original view is not distorted. Also, a portion or a segment of a testimonial can be used provided such use does not result in a meaning different from that when such excerpt appeared in context in the original testimonial. The basic purpose is to prohibit distortion of the original views expressed in the testimonials in such manner that their use would be misleading.

The purpose of the last sentence of the rule is to place responsibility for the truthfulness and accuracy of the testimonial on the insurer and to prevent an insurer from avoiding the other requirements of the chapter by the exclusive use of

testimonial advertising. For example, if a testimonial refers to the dollar amount of any benefit, period of time for which any benefit is payable, or the cost of any benefit or policy, it would fall within the scope of Rule 482-1-013-.05(2) and other applicable rules in the same manner as any other advertisements. However, a mere recital of the amount a company had paid to a claimant over a designated period of time in connection with a specific claim would not in itself render the testimonial subject to Rule 482-1-013-.05(2).

When the amount of aggregate benefits which have been paid to a particular claimant are recited in a testimonial, the statement of this claim payment should not have the capacity and tendency to mislead a reader as to the true nature of the insurance coverage for which the payment was made. For example, if the author of a testimonial had a loss-of-time policy which had paid him $600 loss-of-time benefits for a three-month disability, it might create the impression that the policy paid for hospital expenses if his reproduced testimonial said: "When I was in the hospital for three months, the company paid me $600.00."

Interpretation of Rule 482-1-013-.09

If the term "loss ratio" is used in an advertisement, it shall be based on premiums earned and losses incurred.

Comparison of loss ratios between insurers shall be compared with substantially the same type of insurance plan or same type policy (e.g., group, blanket or individual) issued to the same class of persons.

An advertisement representing the dollar amounts of claims paid must also indicate the period over which such claims have been paid.

An advertisement shall not depict similarity to U.S. currency in any form.

Interpretation of Rule 482-1-013-.10

No comment necessary.

Interpretation of Rule 482-1-013-.11

No comment necessary.

Interpretation of Rule 482-1-013-.12

No comment necessary.

Interpretation of Rule 482-1-013-.13

An advertisement which contains testimonials from persons who reside in a state in which the insurer is not licensed or which refers to claims of persons residing in states in which the insurer is not licensed implies licensing in those states and, therefore, is in violation of this rule unless the advertisement otherwise states.

An advertisement shall not overemphasize the fact that the insurer is licensed in the state where the advertisement is intended to be seen.

Interpretation of Rule 482-1-013-.14

This rule prohibits the use of the name of an agency of "_____ Underwriters" or "_____ Plan" in type, size and location so as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer.

This rule does not prohibit the use of the initials, the trade name of a portion of the corporate name of the insurer unless such use has the capacity and tendency to mislead or

deceive as to the true identity of the insurer, in which event the insurer should set forth its full name and its home or principal office, i.e., city and state.

This rule prohibits an insurer from using an address so as to mislead or deceive as to its true identity or licensing status.

This rule prohibits an insurer or producer from using envelopes or stationery which has printed thereon any name, service mark, slogan, symbol or other device which has the capacity or tendency to mislead or deceive as to imply that the insurer or producer or the policy advertised is connected with or affiliated with a governmental agency such as the Social Security Administration or the Veterans Administration.

Interpretation of Rule 482-1-013-.15

This rule prohibits the use of representations to any segment of individuals that a particular policy or coverage is available only to that, or similar, segment of individuals as preferred risks when actually such policy or coverage is available to eligible members of the public at large. There is no prohibition against advertising that a policy or coverage is available to only a particular segment of individuals such as professional men, businessmen, etc., as preferred risks when in actual underwriting practice such is the fact.

This rule prohibits the solicitation of a particular class such as governmental employees by use of advertisements which state or imply that their occupational status entitles them to reduced rates on a group or other basis when in fact the policy being advertised is sold only on an individual basis at regular rates.

Interpretation of Rule 482-1-013-.16

This rule prohibits any statements or implication in the same advertising media to the effect that only a specific number of policies will be sold, or that a time is fixed for the

discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, or that an individual will receive special advantages by enrolling within an open enrollment period or by a deadline date, unless such is the fact.

The phrase "a particular insurance product" in Rule 482-1-013-.16 means an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, or an increase or decrease in the dollar amount of benefits from those available during the preceding enrollment period shall not be sufficient to constitute the product being offered during the new enrollment period as a different product.

This rule does not prohibit multiple advertising during an enrollment period through any and all media published or transmitted in a given geographical area as long as the enrollment periods for all such advertisements have the same expiration date.

This rule does not apply to advertisements directed to individuals eligible for coverage under true group disability master policies lawfully issued and delivered in other states.

This rule does not require separation by 90 days of enrollment periods for the same insurance product in the same geographical area if the advertising material is directed by an admitted insurer to persons by direct mail in that area on the basis that a common relationship exists with an entity, such as a bank to its depositors, a department store to its charge account customers, or an oil company to its credit card holders, and more than one of such organizations is sponsoring such insurance product at different times, if providing such insurance under such a method is not otherwise prohibited by Alabama statutory provisions; provided, however, the 90 day rule does not apply to one specific sponsor to persons in that area on the basis of their status as customers of that one specific entity only.

The third sentence of Paragraph (2) in Rule 482-1-013-.16 does not prohibit the solicitation of members of a group or association for the same product even though there has been a lapse of 90 days since the close of a preceding enrollment period which was open to the general public for the same product.

The last sentence of Paragraph (1) of Rule 482-1-013-.16 forbids a reduced initial premium for the first month of coverage. The phrase "a renewable policy" means any policy which is renewable; it excludes a single premium nonrenewable policy. This rule requires that the initial monthly renewal premium be disclosed. The amount, or amounts if the premium varies by age, of any such initial monthly renewal premium shall be set forth clearly and conspicuously in a manner which does not tend to mislead.

The phrase "any one insurer" in Paragraph (2) in Rule 482-1-013-.16 includes all the affiliated companies of a group of insurance companies.

Interpretation of Rule 482-1-013-.17(1)

The word "approved" shall not be interpreted so as to permit an insurer to state or imply in an advertisement that a governmental agency has endorsed or recommended the insurer, its policies or its financial condition.

This rule does not prohibit an insurer from reproducing a portion of a filed report of examination of such insurer, conducted by one or more insurance departments, provided the portion reproduced is not taken out of context and thereby rendered untrue or misleading.

Interpretation of Rule 482-1-013-.17(2)

This rule requires current and valid endorsements. It would prohibit representations that a policy or plan of an insurer is a community health plan or program unless such policy or plan has been adopted by the particular community government for the residents of that community or has been so designated by law.

Interpretation of Rule 482-1-013-.18

No comment necessary.

Interpretation of Rule 482-1-013-.19

Among other things, this rule prohibits insurers which have been organized for only a brief period of time from advertising that they are "old" or from making similar untrue representations.

Illustrations of a "Home Office" building should not be used in a manner which will be misleading with respect to the actual size and magnitude of the insurer's business.

Interpretation of Rule 482-1-013-.20

No comment necessary for Paragraphs (1), (2) and (3) of Rule 482-1-013-.20.

Interpretation of Rule 482-1-013-.20(4)

Insurers may be required to submit advertising material for approval prior to use. This requirement is discretionary with the Commissioner and will not be utilized unless, in the opinion of the Commissioner, advertising is being disseminated that is deceptive or otherwise misleading.

Interpretation of Rule 482-1-013-.21

No comment necessary.

Author: John Davis, Associate Counsel
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