

191—37.50(507B,514D) Medicare supplement advertising.

37.50(1) Purpose. The purpose of this rule is to provide prospective purchasers with clear and unambiguous statements in the advertisement of Medicare supplement insurance and to ensure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance. This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which prevents unfair, deceptive and misleading advertising and which is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by producers and companies.

37.50(2) Applicability.

a. This rule shall apply to any “advertisement” of Medicare supplement insurance, as that term is defined in subrule 37.50(3), unless otherwise specified in this rule, that the issuer or producer knows or reasonably should know is intended for presentation, distribution or dissemination in this state when the presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an issuer or producer.

b. The requirements of Iowa Code chapter 507B and 191—Chapter 15 also shall apply to issuers and producers to which this rule 191—37.50(507B,514D) applies, unless specifically exempted therein.

37.50(3) Definitions. In addition to the definitions in Iowa Code sections 507B.2 and 514D.2 and rules 191—15.2(507B) and 191—37.3(514D), the following definitions shall apply to this rule 191—37.50(507B,514D). When a term defined in this rule is also defined in Iowa Code section 507B.2 or 514D.2 or rule 191—15.2(507B) or 191—37.3(514D), the definition of the term in this rule shall take precedence.

“Advertisement”

1. Includes the definition of “advertisement” in rule 191—15.2(507B).
2. Includes advertising material included with a Medicare supplement policy or certificate when the Medicare supplement policy or certificate is delivered and the advertising material is used in the solicitation of Medicare supplement policy renewals and reinstatements.
3. Does not include:
 - The items excluded in paragraph “2” of the definition of “advertisement” in rule 191—15.2(507B).
 - Material to be used solely for the training and education of an issuer’s employees, producers, agents or brokers.
 - Material used in-house by issuers.
 - Communications within an issuer’s own organization not intended for dissemination to the public.
 - Individual communications of a personal nature with current covered individuals other than material urging the covered individuals to increase or expand coverage.
 - Correspondence between a prospective group or blanket policyholder and an issuer in the course of negotiating a group or blanket Medicare supplement policy.
 - Court-approved material ordered by a court to be disseminated to covered individuals or group policyholders of Medicare supplement policies.
 - A general announcement from a group or blanket Medicare supplement policyholder to eligible individuals on an employment or membership list that a Medicare supplement policy has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet.

“Certificate” means any certificate issued under a group Medicare supplement policy, which certificate has been delivered or issued for delivery in this state.

“Exception” means any provision in a Medicare supplement policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the Medicare supplement policy or certificate.

“Institutional advertisement” means an advertisement having as its sole purpose the promotion of the reader’s, viewer’s or listener’s interest in the concept of Medicare supplement insurance, or the promotion of the issuer as a seller of Medicare supplement insurance.

“Invitation to contract” means an advertisement that is neither an institutional advertisement nor an invitation to inquire (defined in paragraph 37.50(8) “d”).

“*Issuer*” shall include any entity which is defined as an “issuer” in rule 191—37.3(514D) and is engaged in the advertisement of itself, or of Medicare supplement insurance.

“*Lead-generating device*” means any communication directed to the public that, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance.

“*Limitation*” means any provision other than an exception or a reduction that restricts coverage under a Medicare supplement policy.

“*Medicare supplement insurance*” means a group or individual policy of accident and sickness insurance or a contract of hospital and medical service associations or health maintenance organizations that is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age.

“*Person*” means a natural person, association, organization, partnership, trust, group, discretionary group, corporation or any other entity.

“*Reduction*” means any provision that reduces the amount of the 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.

37.50(4) *Form and content of advertisements.*

a. An issuer shall clearly identify its Medicare supplement insurance as an insurance policy or certificate. A Medicare supplement policy or certificate trade name must be followed by the words “Insurance Policy” or similar words clearly identifying the fact that an insurance policy or certificate or health benefits product (in the case of health maintenance organizations, prepaid health plans and other direct service organizations) is being offered.

b. Medicare supplement insurance advertising materials that are reproduced in quantity shall be identified by form numbers or other identifying means. The identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications or other materials used by the issuer.

37.50(5) *Testimonials or endorsements by third parties.* In addition to complying with 191—subrule 15.3(7), when a testimonial refers to benefits received under a Medicare supplement policy or certificate, the issuer shall retain for examination by the commissioner the specific claim data, including claim number, date of loss, and other pertinent information, for a period of four years or until the filing of the next regular report of examination of the issuer, whichever is the longer period of time. The use of testimonials that do not correctly reflect the present practices of the issuer or that are not applicable to the Medicare supplement policy or certificate or benefit being advertised is not permissible.

37.50(6) *Use of statistics; jurisdictional licensing; status of insurer.* Medicare supplement insurance advertisements shall be in compliance with 191—subrule 15.3(5) and with the following:

a. A Medicare supplement insurance advertisement shall specifically identify the Medicare supplement policy or certificate to which statistics relate and, where statistics are given which are applicable to a different policy or certificate, the advertisement shall state clearly that the data do not relate to the Medicare supplement policy or certificate being advertised.

b. A Medicare supplement insurance advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the issuer is licensed shall not imply licensing beyond those limits.

c. A Medicare supplement insurance advertisement shall not create the impression directly or indirectly that the issuer, the issuer’s financial condition or status, the issuer’s payment of its claims, or the merits, desirability or advisability of the issuer’s policy forms or kinds of plans of insurance are approved, endorsed or accredited by any division or agency of this state or of the United States government.

d. A Medicare supplement insurance advertisement shall not imply that approval, endorsement or accreditation of policy forms or advertising has been granted by any division or agency of this state or of the United States government. “Approval” of either policy forms or advertising shall not be used by an issuer to imply or state that a governmental agency has endorsed or recommended the issuer, its policies, its advertising or its financial condition.

37.50(7) *Identity of issuer.* Advertisements shall be in compliance with 191—subrule 15.3(9) and with the following:

a. Advertisements, stationery or envelopes that employ words, letters, initials, symbols or other devices are not permitted if they are so similar to those used by governmental agencies or other issuers that they may lead the public to believe:

(1) The advertised Medicare supplement insurance coverages are somehow provided by or are endorsed by the governmental agencies or the other issuers;

(2) The Medicare supplement insurance advertiser is the same as, is connected with or is endorsed by the governmental agencies or the other issuers.

b. No Medicare supplement insurance advertisement shall use the name of a state or political subdivision thereof in a policy name or description.

c. No Medicare supplement insurance advertisement in the form of envelopes or stationery of any kind may use any name, service mark, slogan, symbol or any device in such a manner that implies that the issuer or the policy advertised, or that any producer who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the Social Security Administration.

d. No Medicare supplement insurance advertisement may incorporate the word “Medicare” in the title of the plan or policy being advertised unless, wherever it appears, the word is qualified by language differentiating the plan or policy from Medicare. Such an advertisement, however, shall not use the phrase “_____ Medicare Department of the _____ Insurance Company,” or language of similar import.

e. No Medicare supplement insurance advertisement shall be used that fails to include a disclaimer to the effect of “Not connected with or endorsed by the U.S. government or the federal Medicare program.”

f. No Medicare supplement insurance advertisement may imply that the reader may lose a right, privilege or benefit under federal, state or local law if the reader fails to respond to the advertisement.

g. No issuer may use, in the trade name of its Medicare supplement insurance policy, any terminology or words so similar to the name of a governmental agency or governmental program as to have the tendency to confuse, deceive or mislead the prospective purchaser.

h. All Medicare supplement insurance advertisements used by producers or solicitors of an issuer shall have prior written approval of the issuer before the advertisements may be used.

i. A producer who makes contact with a consumer as a result of acquiring that consumer’s name from a lead-generating device shall disclose that fact in the initial contact with the consumer.

37.50(8) *Introductory, initial or special offers.*

a. Enrollment periods.

(1) An advertisement of an individual Medicare supplement insurance policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such representation is true. A Medicare supplement insurance advertisement shall not contain phrases describing an enrollment period as “special,” “limited,” or similar words or phrases when the issuer uses such enrollment periods as the usual method of advertising Medicare supplement insurance.

(2) An enrollment period during which a particular Medicare supplement insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than six months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The Medicare supplement insurance advertisement shall indicate the date by which the applicant must mail the application, which shall be not fewer than 10 days and not more than 40 days from the date that the enrollment period is advertised for the first time. This rule applies to all advertising media, e.g., mail, newspapers, electronic mail, websites, radio, television, magazines and periodicals, used by any one issuer. This rule is not applicable to solicitations of employees or members of a particular group or association that otherwise would be eligible for group, blanket or franchise insurance. The phrase “any one issuer” in this subparagraph includes all the affiliated companies of a group of insurance companies under common management or control. The phrase “a particular Medicare supplement insurance product” in this subparagraph means an insurance policy that

provides benefits substantially different from those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product's being offered as a different product eligible for concurrent or overlapping enrollment periods.

(3) This rule prohibits any statement or implication to the effect that only a specific number of Medicare supplement policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular Medicare supplement policy advertised because of special advantages available in the policy, unless either representation is true.

b. An advertisement shall not offer a Medicare supplement policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. When an issuer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium shall be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears. The term "juxtaposition" means side by side or immediately above or below.

c. Special awards, such as a "safe driver's award," shall not be used in connection with advertisements of Medicare supplement insurance.

d. An invitation to inquire, which means an advertisement having as its objective the creation of a desire to inquire further about Medicare supplement insurance that is limited to a brief description of coverage, shall contain a provision in the following or substantially similar form:

"This policy has [exclusions] [limitations] [reductions of benefits] [terms under which the policy may be continued in force or discontinued]. For costs and complete details of the coverage, call [or write] your producer or the company [whichever is applicable]."

37.50(9) *Enforcement procedures—certificate of compliance.* Each issuer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this chapter must file with the insurance division, with the issuer's annual statement, a certificate of compliance executed by an authorized officer of the issuer wherein it is stated that, to the best of the authorized officer's knowledge, information and belief, the Medicare supplement insurance advertisements that were disseminated by the issuer during the preceding statement year complied with or were made to comply in all respects with the provisions of this chapter and the laws of this state as implemented and interpreted by this chapter.

37.50(10) *Filing for prior review.* The commissioner may, at the commissioner's discretion, require the filing with the insurance division, for review prior to use, of any Medicare supplement insurance advertising material.

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