

CHAPTER 45-06-04 ADVERTISING RULES

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45-06-04-01. Purpose.

The purpose of this chapter is to assure truthful and adequate disclosure of all material and relevant information in the advertising of disability and accident and sickness insurance (including nursing home, long-term care, and Medicare supplement insurance). This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of such insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy or agreement of such insurance offered through various advertising media. Subsections 1 and 2 of North Dakota Century Code section 26.1-04-03 prohibit false, deceptive or misleading advertising in the conduct of the business of insurance. Because those statutes establish only general standards, this rule establishes specific standards for advertisements relating to individual group, blanket, and franchise disability, and accident and sickness insurance.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-02. Applicability.

1. This chapter applies to every "advertisement", as that term is defined in this chapter unless otherwise specified in this chapter, intended for presentation, distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, or broker as those terms are defined in the insurance code of this state and this chapter.
2. Every insurer, agent, or broker shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the joint and several responsibility of the insurer, agent, broker, or agency for whom such advertisements are prepared.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-03. Definitions.

1. An "advertisement" for the purpose of this chapter includes:

- a. Printed and published material, audio visual material, and descriptive literature of an insurer, agent, or broker used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards, and similar displays;
 - b. Descriptive literature, identification cards, and sales aids of all kinds used by an insurer, agent, or broker for presentation to members of the insurance buying public, including, but not limited to, circulars, business calling cards, lead cards, surveys, leaflets, booklets, depictions, illustrations, and form letters; and
 - c. Prepared sales talks, presentations, and material for use by agents, brokers, and solicitors.
2. "Exception" for the purpose of this chapter means any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement or a risk not assumed under the policy.
 3. "Institutional advertisement" for the purpose of this chapter means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of accident and sickness insurance, or the promotion of the insurer.
 4. "Insurer" for the purposes of this chapter includes any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, nonprofit health service corporation, health maintenance organization, and any other legal entity which is defined as an "insurer" in the insurance code of this state and is engaged in the advertisement of an insurance policy as "policy" is defined in this section.
 5. "Invitation to contract" for the purpose of this chapter means an advertisement which is neither an invitation to inquire nor an institutional advertisement.
 6. "Invitation to inquire" for the purpose of this chapter means an advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable, and which may contain:
 - a. The dollar amount of benefit payable, and/or
 - b. The period of time during which the benefit is payable; provided the advertisement does not refer to cost. An advertisement which specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable must contain a provision in effect as follows:

"For costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."
 7. "Limitation" for the purpose of this chapter means any provision which restricts coverage under the policy other than an exception or a reduction.
 8. "Policy" for the purpose of this chapter includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides disability benefits, or medical, surgical, or hospital expense benefits, whether on an indemnity, reimbursement, service, or prepaid basis, nursing home benefits, long-term care insurance benefits, and Medicare supplement benefits.
 9. "Reduction" for the purpose of this chapter means any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-04. Form and content of advertisements.

1. The format and content of an advertisement to which this chapter applies must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive must be determined by the insurance commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
2. Advertisements must be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-05. Deceptive words, phrases, or illustrations prohibited.

1. No advertisement may omit information or use words, phrases, statements, references, or illustrations if the omission of such information or use of such 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 of an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.
2. 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 manner which exaggerates any benefits beyond the terms of the policy.
3. An advertisement may not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "benefit builder", or stating "even preexisting conditions are covered after two years". Words and phrases used in an advertisement to describe such policy limitations, exceptions, and reductions must fairly and accurately describe the negative features of such limitations, exceptions, and reductions of the policy offered.
4. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility may use words or phrases such as "extra cash"; "extra income"; "extra pay"; or substantially similar words or phrases because such words and 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.
5. No advertisement of a hospital or other similar facility confinement benefit may advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.

6. No advertisement of a policy covering only one disease or a list of specified diseases may imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease so as to imply broader coverage than is the fact.
7. An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, must clearly and conspicuously in prominent type state the limited nature of the policy. The statement must be worded in language identical to, or substantially similar to the following: "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".
8. An advertisement of a direct response insurance product may not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan", or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.
9. The phrase "tax free" may not be used in or as a heading, caption, or title in any advertisement and may not be unduly or deceptively emphasized, but it may be used in connection with a reasonably complete explanation of the internal revenue service rules applicable to the particular benefits afforded by the policy or policies advertised.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-06. Exceptions, reductions, and limitations to be disclosed.

1. When an advertisement which is an invitation to contract refers to either a dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it must also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.
2. When a policy contains a waiting, elimination, probationary, or similar time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of subsection 1 must disclose the existence of such periods.
3. An advertisement may not use the words "only"; "just"; "merely"; "minimum"; or similar words or phrases to deceptively describe or unfairly minimize the applicability of any exceptions and reductions contained in the policy advertised.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-07. Preexisting conditions.

1. An advertisement which is subject to the requirements of section 45-06-04-06 must, in negative terms, disclose the extent to which any loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" without an appropriate definition or description may not be used.
2. When a policy does not cover losses resulting from preexisting conditions, no advertisement of the policy may state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does

not prohibit explaining "automatic issue". If an insurer requires a medical examination for a specified policy, the advertisement if it is an invitation to contract must disclose that a medical examination is required.

3. When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form must contain a question requiring a response by the applicant or a statement in prominent type, all in capital letters, which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form must contain a question substantially as follows:

"Do you understand that this policy will not pay benefits during the first ----- year(s) after the issue date for a disease or physical condition which you now have or have had in the past?" ----- Yes

Or a statement in prominent type, all capitalized, substantially as follows:

"I UNDERSTAND THAT THE POLICY APPLIED FOR WILL NOT PAY BENEFITS FOR ANY LOSS INCURRED DURING THE FIRST ----- YEAR(S) AFTER THE ISSUE DATE ON ACCOUNT OF DISEASE OR PHYSICAL CONDITION WHICH I NOW HAVE OR HAVE HAD IN THE PAST."

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-08. Testimonials or endorsements by third parties.

1. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement is subject to all the provisions of these rules.
2. If the person making a testimonial, an endorsement, or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact must be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement, or appraisal, such fact must be disclosed in the advertisement by language substantially as follows: "Paid endorsement". This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for television or radio performance. The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of television or radio advertisements removes the filming or recording from the category of an unsolicited testimonial and requires disclosure of such compensation. This subsection does not apply to an institutional advertisement which has as its sole purpose the promotion of the insurer.
3. An advertisement may not state or imply that any insurer or a policy has been approved or endorsed by an individual, group of individuals, society, association, or other organizations, unless such is the fact, and unless 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 the person or persons who own or control the insurer, such fact must be disclosed in the advertisement.
4. When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss, and other pertinent information must be retained by the insurer for inspection for a period of four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-09. Jurisdictional licensing and status of insurer.

1. An advertisement which reasonably is expected to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond those limits.
2. An advertisement may not create the impression directly or indirectly that the insurer, its financial condition or status, or the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of this state or the United States government.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-10. Identity of insurer and agent or agency.

1. The full legal name of the actual insurer and insurance agent or agency must be shown in each advertisement. An advertisement may not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer or agency, service mark, slogan, symbol, or other device in a manner which would have the capacity and tendency to mislead or deceive as to the true identity of the insurer or insurance agent or agency.
2. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to combination of words, symbols, or physical materials, used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.
3. Each advertisement must clearly disclose that it is a promotion for an insurance product, company, agent, or agency.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-11. Advertising file to be maintained.

Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of its individual policies and typical printed, published, or prepared advertisements of its blanket, franchise, and group policies hereafter disseminated in this or any other state whether or not licensed in such state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file is subject to regular and periodical inspection by the insurance commissioner. All such advertisements must be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

45-06-04-12. Violation defined as unfair trade practice.

A violation of this chapter by an insurance company or agent is an unfair method of competition and an unfair or deceptive act or practice in the conduct of the business of insurance, pursuant to North Dakota Century Code section 26.1-04-03.

History: Effective March 1, 1988.

General Authority: NDCC 26.1-04-08, 28-32-02

Law Implemented: NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07