

## **CHAPTER 45-04-10 ADVERTISING RULES**

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### **45-04-10-01. Definitions.**

For the purpose of sections 45-04-10-01 through 45-04-10-08:

1. "Advertisement" is material designed to create public interest in life insurance or annuities or in an insurer or in an insurance agent or agency, or to induce the public to purchase, increase, modify, reinstate, or retain a policy including:
  - a. Printed and published material, audiovisual material, and descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, and television scripts, billboards, and similar displays.
  - b. Descriptive literature, identification cards, and sales aids of all kinds issued by an insurer or agent, including, but not limited to, business calling cards, lead cards, surveys, circulars, leaflets, booklets, depictions, illustrations, and form letters.
  - c. Material used for the recruitment, training, and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, or retain a policy.
  - d. Prepared sales talks, presentations, and material for use by sales personnel, agents, solicitors, and brokers.
2. "Advertisement" for the purpose of this chapter does not include:
  - a. Communications or materials used within an insurer's, agent's, or broker's own organization and not intended for dissemination to the public.
  - b. Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate, request information relating to, or retain a policy.
  - c. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.
3. "Insurer" includes any individual, corporation, partnership, reciprocal exchange, interinsurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy. This term also includes insurance agents, brokers, and agencies insofar as their own advertising practices for a particular policy or type of coverage are concerned.

4. "Policy" includes any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

**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

#### **45-04-10-02. Applicability.**

1. This chapter applies to any advertisement of life insurance or an annuity product intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of an insurance company, agency, agent, or broker.
2. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer, as well as the agent or agency who created, requested, or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form, and methods of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers, and others authorized by the insurer to disseminate advertisements, of the requirement and procedures for insurance company approval prior to the use of any advertisements that are not furnished by the insurer and that clearly set forth within the notice the most serious consequences of not obtaining the required prior approval.

**History:** Effective March 1, 1988; amended effective January 1, 2016.

**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

#### **45-04-10-03. Disclosure requirements.**

1. The information required to be disclosed by this chapter may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
2. No advertisement may omit material information or use words, phrases, statements, references, or illustrations if such omission or such use 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, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements. Whether an advertisement has the 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.
3. In the event an advertisement uses "Non-Medical", "No Medical Examination Required", or similar terms where issue is not guaranteed, such terms must be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.
4. An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.
5. An advertisement must prominently describe the type of policy advertised.

6. An advertisement of an insurance policy marketed by direct response techniques may not state or imply that because there is no agent or commission involved there will be a cost-savings to prospective purchasers unless such is the fact. No such cost-savings may be stated or implied without justification satisfactory to the insurance commissioner prior to use.
7. An advertisement for a policy containing graded or modified benefits must prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact must be prominently disclosed.
8. An advertisement for a policy with nonlevel premiums must prominently describe the premium changes.
9. Dividends.
  - a. An advertisement may not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.
  - b. An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.
  - c. An advertisement may not state or imply that illustrated dividends under a participating policy or pure endowments, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.
10. An advertisement may not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earning on the general account assets of the company.
11. Testimonials or endorsements by third parties.
  - a. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of these rules.
  - b. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact must be disclosed in the advertisement.
  - c. An advertisement may not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization 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 is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact must be disclosed in the advertisement.
12. An advertisement may not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement must be identified therein.
13. Introductory, initial, or special offers and enrollment periods.

- a. An advertisement of an individual policy or combination of such policies may not state or imply that such policy or combination of such policies 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 is the fact. An advertisement may not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.
  - b. An advertisement may not state or imply 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.
  - c. An advertisement may not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium must be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
  - d. An enrollment period during which a particular insurance policy may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than twelve months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement must specify the date by which the applicant must mail the application, which must be not less than ten days and not more than forty days from the date on which such enrollment period is advertised for the first time. This rule applies to all advertising media - i.e., mail, newspapers, radio, television, magazines, and periodicals - by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to the applicant's request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket, or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this section must be applied separately to each sponsoring organization.
- 14. An advertisement of a particular policy may not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.
  - 15. An advertisement may not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement may not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.
  - 16. For individual deferred annuity products or deposit funds, the following shall apply:
    - a. Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. Such higher interest rates may not be greater than those currently being credited by the company unless such higher rates have been publicly

declared by the company with an effective date for new issues not more than three months subsequent to the date of declaration.

- b. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it must also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and net premiums.
- c. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning such contract must prominently state that cash surrender benefits are not provided.

**History:** Effective March 1, 1988; amended effective January 1, 2016.

**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

#### **45-04-10-04. Identity of insurer.**

1. The name of the insurer, insurance agency, agent, or broker must be clearly identified on all advertisements, and if any specific individual policy is advertised it must be identified either by form number or other appropriate description. An advertisement may not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, agent, broker, or agency, service mark, slogan, symbol, or other device or reference without disclosing the name of the insurer, agent, broker, or agency if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer, agent, broker, or agency or create the impression that an entity other than the insurer would have any responsibility for the financial obligation under a policy.
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 a combination of words, symbols, or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program 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

#### **45-04-10-05. Jurisdictional licensing and status of insurer.**

1. An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed may not imply licensing beyond such limits.
2. An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.
3. An advertisement may not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, such fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

**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

#### **45-04-10-06. Statements about the insurer.**

An advertisement may not contain statements, pictures, or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement may not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

**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

#### **45-04-10-07. Enforcement procedures.**

Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published, or prepared advertisement of its individual policies and specimen copies of typical printed, published, or prepared advertisements of its blanket, franchise, and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file is subject to inspection by this department. 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 the examination of the insurer, whichever is the longer period of time.

**History:** Effective March 1, 1988; amended effective January 1, 2006.

**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

#### **45-04-10-08. Conflict with other rules.**

It is not intended that this chapter conflict with or supersede any rules currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, and replacement of life insurance policies. Consequently, no disclosure required under any such rules shall be deemed to be an advertisement within the meaning of this chapter.

**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