

TITLE 13 INSURANCE
CHAPTER 6 LIFE AND HEALTH INSURANCE FORMS AND RATES
PART 3 ADVERTISING ACCIDENT AND HEALTH INSURANCE, LIFE INSURANCE AND ANNUITIES

13.6.3.1 ISSUING AGENCY: Office of Superintendent of Insurance - Life and Health Product Filing Bureau.

[13.6.3.1 NMAC - N, 9/15/2019]

13.6.3.2 SCOPE:

A. This rule applies to accident and health insurance, life insurance and annuity advertisements presented, distributed or disseminated, or that the insurer knows or reasonably should know are intended for presentation, distribution or dissemination in this state.

B. In variable contracts and other registered products where disclosure requirements are established pursuant to federal regulation or by other state regulations, this regulation shall be interpreted so as to eliminate conflict therewith.

[13.6.3.2 NMAC - N, 9/15/2019]

13.6.3.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-16-4 and 59A-16-5 NMSA 1978.

[13.6.3.3 NMAC - N, 9/15/2019]

13.6.3.4 DURATION: Permanent.

[13.6.3.4 NMAC - N, 9/15/2019]

13.6.3.5 EFFECTIVE DATE: September 15, 2019, unless a later date is cited at the end of the section.

[13.6.3.5 NMAC - N, 9/15/2019]

13.6.3.6 OBJECTIVE: The purpose of this rule is to protect the public with respect to the advertisement of accident and health insurance, life insurance and annuities. The rule establishes minimum criteria to ensure the clear and truthful disclosure of the benefits, limitations and exclusions of policies offered in this state and establishes standards to prevent unfair, deceptive and misleading advertising of these products and of those who sell them.

[13.6.3.6 NMAC - N, 9/15/2019]

13.6.3.7 DEFINITIONS: For the purposes of this rule:

A. “**Accident and health insurance**” shall have the meaning set forth in Section 59A-7-3 NMSA 1978.

B. “**Advertisement.**”

(1) “**Advertisement**” means material or content presented in any medium designed to create interest in accident and health insurance, life insurance, an annuity or an insurer, or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:

(a) material used for the recruitment, training and education of producers by an insurer that is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;

(b) prepared sales talks or presentations; and

(c) material included with a policy when the policy is delivered or used in the solicitation of renewals and reinstatements.

(2) “**Advertisement**” does not mean:

(a) material to be used solely for the training and education of an insurer’s employees or producers;

(b) communications or materials used within an insurer’s own organization and not intended for dissemination to the public;

(c) individual communications of a personal nature with current policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy;

(d) correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;

(e) court-approved material ordered by a court to be disseminated to policyholders;

or

(f) a general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged provided that the announcement clearly indicates that it is preliminary to the issuance of an explanation of the proposed coverage.

C. “**Certificate**” means a statement of the coverage and provisions of a policy issued under a group insurance policy that has been delivered or issued for delivery in this state and includes riders, endorsements and enrollment forms, if attached.

D. “**Conspicuous**” means noticeable and set apart from other information or images in an advertisement.

E. “**Excepted benefits**” means benefits furnished pursuant to Subsection L of Section 59A-23E2 NMSA 1978.

F. “**Exception**” shall have the meaning set forth in Paragraph (5) of Subsection E of 13.10.29.7 NMAC.

G. “**Guaranteed policy elements**” means the premiums, benefits, values, credits or charges, or elements of formulas used to determine them, that are guaranteed and determined at issue in a life insurance policy or annuity contract.

H. “**Institutional advertisement**” means an advertisement having as its sole purpose the promotion of the concept of accident and health insurance, life insurance or an annuity or of an insurer.

I. “**Insurer**” means a person, reciprocal exchange, fraternal benefit society, health maintenance organization, nonprofit health care plan, prepaid dental or vision plan, multiple employer welfare arrangement, association health plan, trust or other legal entity, including alien and foreign insurers, engaged in the business of accident and health insurance, life insurance or annuities.

J. “**Invitation to contract**” means an advertisement that is neither an invitation to inquire nor an institutional advertisement.

K. “**Invitation to inquire**” means an advertisement having as its objective the creation of a desire to inquire further about accident and health insurance, life insurance or an annuity that is limited to a brief description of the loss for which benefits are payable, but may contain:

(1) the dollar amount of benefits payable; or

(2) the period of time during which benefits are payable.

L. “**Lead-generating device**” means a communication directed to the public, regardless of form, content or stated purpose that is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit the public for the purchase of accident and health insurance, life insurance or an annuity.

M. “**Life insurance**” and “**annuity**” shall have the meaning set forth in Section 59A-7-2 NMSA 1978 and, for the purposes of this rule, shall include variable life insurance and annuities as set forth in Section 59A-7-7 NMSA 1978.

N. “**Limitation**” means a provision that restricts coverage under a policy other than an exception, exclusion or reduction.

O. “**Medicare supplement policy**” shall have the meaning set forth in Subsection F of Section 59A-24A-3 NMSA 1978.

P. “**Nonguaranteed elements**” means premiums, credited interest rates (including a bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to insurer discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

Q. “**Person**” shall have the meaning set forth in Subsection A of Section 59A-1-10 NMSA 1978.

R. “**Policy**” means a policy, plan, certificate, contract, agreement, evidence or statement of coverage, rider or endorsement that provides for accident and health insurance, life insurance or an annuity.

S. “**Producer**” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including agents, brokers and solicitors.

T. “**Prominent**” means easily legible or audible by any member of an advertisement’s audience.

U. “**Reduction**” means any provision which reduces the amount of a benefit, such as when 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 applied.

V. “**Registered product**” means life insurance or an annuity subject to the prospectus delivery requirements of the Securities Act of 1933.

W. “SERFF” means the System for Electronic Rates and Forms Filings.

X. “Short-term, limited-duration plan” or “short-term plan” shall have the meaning set forth in Subsection S of 13.10.29.2 NMAC.
[13.6.3.7 NMAC - N, 9/15/2019]

13.6.3.8 FILING FOR PRIOR REVIEW AND APPROVAL:

A. An advertisement shall not be used until it and any policy to which it pertains have been approved by the superintendent. The superintendent reserves the right to disapprove and disallow advertisements for policies that do not comply with all laws and regulations of this state. Any person aggrieved by the superintendent’s decision to disapprove or disallow an advertisement may seek a hearing on the superintendent’s decision by following the procedures of 13.1.5 NMAC.

B. Advertisements shall be filed in SERFF for review and approval at least 30 days prior to the date of the advertisement’s release.

C. Advertisements filed shall be definitive and free of figures or variable language unless a statement of variability is provided that clearly describes the language or numerical values that may be used.

D. An advertisement intended for delivery in a language other than English shall be filed along with a valid translation certificate that includes:

- (1) the name of and contact information for the company employing the translator;
- (2) the name of the translated document, including version number and/or date, if applicable;

and

- (3) the form number of the advertisement.

[13.6.3.8 NMAC - N, 9/15/2019]

13.6.3.9 INSURERS’ RESPONSIBILITIES:

A. An advertisement, regardless of by whom it is produced or presented, shall be the responsibility of the insurer.

B. An insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of advertisements.

(1) An insurer’s system of control shall include regular and routine notification, at least once annually, by the insurer to producers and others authorized by the insurer to disseminate its advertisements, of the requirement and procedures for approval prior to use.

(2) The notification shall clearly set forth the most serious consequence of not obtaining the required prior approval.

C. Each page, part or piece of an advertisement shall include the form number and the insurer’s full name. Identification shall be sufficient to distinguish the advertisement from any other.

D. Where an advertisement consists of more than one piece of material, each piece of material must, independent of all others, conform to the requirements of this rule.

E. On or before March 1, 2020, and annually thereafter each insurer subject to the provisions of this section shall file with the superintendent in SERFF a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of the officer’s knowledge, information and belief, the advertisements that were disseminated by or on behalf of the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of this rule and the Insurance Code.

[13.6.3.9 NMAC - N, 9/15/2019]

13.6.3.10 METHOD OF DISCLOSURE OF REQUIRED INFORMATION: All information required to be disclosed in an advertisement by this rule shall be prominent and in close conjunction with the statements to which the information relates or under appropriate captions of sufficient prominence that it shall not be minimized, rendered obscure or otherwise made to appear unimportant, presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

A. The phrase “under appropriate captions” means that the title must be accurately descriptive of the captioned material. Appropriate captions may include the following: “Exceptions,” “Exclusions,” “Limitations,” “Conditions Not Covered” and “Exceptions and Reductions.”

B. The use of captions that do not provide adequate notice of the significance of the material is prohibited. Examples include but are not limited to “Extent of Coverage,” “Only These Exclusions” or “Minimum Limitations.”

[13.6.3.10 NMAC - N, 9/15/2019]

13.6.3.11 FORM AND CONTENT OF ADVERTISEMENTS:

A. In general. An advertisement shall accurately and adequately represent the policy advertised.

B. Type of policy and product type. An advertisement that uses the word “plan” without prominently identifying the type of insurance policy is prohibited.

(1) An insurer shall clearly identify a product or contract as an accident and health or life insurance policy or as an annuity.

(2) A policy trade name shall be followed by the words “Insurance Policy” or “Annuity” or similar words clearly identifying the fact that an insurance policy or annuity is being offered.

C. Identity of insurer, names and addresses that deceive or mislead:

(1) Name and domicile of insurer and identification of policy. The full name of the insurer, as licensed by the state and as listed on the policy, and the location of its home office or principle office, if any, in the United States (if an alien insurer) shall be clearly identified in all advertisements about the insurer or its products, and if any specific individual policy is advertised, it shall be identified by form number. An advertisement for a product that is not available for sale in New Mexico shall clearly so state.

(a) If an application is a part of the advertisement, the full name of the insurer shall appear on the application.

(b) If an advertisement contains a list of rates or features composed of several different policies or contracts of different insurers, the advertisement shall:

(i) so state;

(ii) indicate, if applicable, that not all policies or contracts on which the composite is based may be available in this state; and

(iii) provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated.

(2) Use of pseudonyms. An advertisement shall not use a true name or a fictitious name that is deceptive or misleading with regard to the status, character, proprietary or representative capacity of the advertiser or the true purpose of the advertisement.

(a) An advertisement shall not use a trade name, association name, insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, a reinsurer of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer or underwriter if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or underwriter or create the impression that a person other than the insurer or underwriter would have any responsibility for the financial obligation under a policy.

(b) The use in an advertisement of letters, initials or symbols of a corporate name or trademark that would have the tendency or capacity to mislead or deceive the public as to the true identity of the insurer is prohibited unless the true, correct and complete name of the insurer is in close conjunction with and has the same prominence and emphasis as the letters, initials or symbols of the corporate name or trademark.

(c) The use of the name of an agency or “[name] underwriters” or “[name] plan” in such prominence and location so as to have the capacity and tendency to mislead or deceive as to the true identity of the insurer is prohibited.

(3) Statements about the insurer.

(a) An advertisement shall not contain statements, pictures or illustrations that 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 market.

(b) An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the ratings including, but not limited to, the placement of the insurer’s rating in the hierarchy of the rating system cited.

(4) Misleading address. The use in an advertisement of an address so as to mislead or deceive as to true identity of the insurer, its location or licensing status is prohibited.

D. Capacity or tendency to deceive or mislead, truthfulness and clarity.

(1) The format and content of an advertisement shall 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 shall be determined by the superintendent 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) An advertisement shall be truthful and not misleading in fact or by implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(3) An advertisement shall not mislead by representation or misrepresentation or contain statements that are otherwise untrue or deceptive with regard to the information imparted, the status, character or representative capacity of the advertiser or the true purpose of the advertisement.

(4) An invitation to inquire shall contain a provision in the following or substantially similar form: "This policy has [exclusions] [limitations] [reduction 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 insurance agent or the company."

E. Inducing fear or anxiety. An advertisement, including invitations to inquire or invitations to contract, shall not employ devices that are designed to create undue fear or anxiety in the minds of those to whom they are directed. Examples of prohibited devices are:

(1) the use of phrases such as "cancer kills somebody every two minutes" and "total number of accidents" without reference to the total population from which the statistics are drawn;

(2) the exaggeration of the importance of diseases rarely or seldom found in the class of persons to whom the policy is offered;

(3) the use of phrases such as "the finest kind of treatment," implying that the treatment would be unavailable without insurance;

(4) the reproduction of newspaper articles, magazine articles, information from the Internet or other similar published material containing irrelevant facts and figures;

(5) the use of images that unduly emphasize automobile accidents, disabled persons or persons confined in beds who are in obvious distress, persons receiving hospital or medical bills or persons being evicted from their homes due to their medical bills;

(6) the use of phrases such as "financial disaster," "financial distress," "financial shock" or another phrase implying that financial ruin is likely without insurance is only permissible in an advertisement for major medical expense coverage, individual basic medical expense coverage or disability income coverage, and only if the phrase does not dominate the advertisement;

(7) the use of phrases or devices that unduly excite fear of dependence upon relatives or charity; and

(8) the use of phrases or devices that imply that long sicknesses or hospital stays are common among the elderly.

F. Implication of governmental relationship.

(1) Applications, request forms for additional information and similar related materials are prohibited if they resemble paper currency, bonds or stock certificates or use any name, service mark, slogan, symbol or device in a manner that implies that the insurer or the policy advertised is connected with a government agency, such as the *Social Security Administration* or the *Department of Health and Human Services*.

(2) No 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 it from Medicare. For example, the advertisement shall not use the phrase "[name] Medicare Department of the [name] insurance company" or language of similar import.

(3) An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition, status, 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 government entity. However, where a governmental entity has recommended or endorsed a policy form or plan, that fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

(4) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to those used by a governmental program or agency that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

(5) Advertisements which employ words, letters, initials, symbols or other devices that are similar to those used by a governmental agency or by another insurer are not permitted if they may lead the public to believe:

(a) that the advertised policies are provided or endorsed by the governmental agency or other insurer; or

(b) that the advertiser is the same as, is connected with or is endorsed by the

governmental agency or other insurer.

(6) An advertisement shall not use any name, service mark, slogan, symbol or any device in a manner that implies that the insurer or the policy advertised, or that any agent who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the social security administration.

(7) An advertisement shall not imply that failure to respond to the advertisement may lose a right, privilege or benefit under federal, state or local law.

(8) An advertisement shall not use the name of a state or political subdivision thereof in a policy name or description unless in stating an exception for a state in which the policy cannot be purchased.

G. Policies Sold to Students. An envelope or electronic communication in which insurance solicitation material is contained may be addressed to the parents of students. There shall be no implication, however, that the material is from a school, college, university or other educational or training institution nor that the institution has endorsed the material or supplied the insurer with information about the student unless that is the case.

H. Financial planners. An insurance producer shall not use terms such as “financial planner,” “investment adviser,” “financial consultant” or “financial counseling” in such a way as to imply that the producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is the case.

(1) This provision shall not preclude producers who hold a recognized financial planning or consultant designation from using the designation even when they are only selling insurance.

(2) This provision shall not preclude a producer who is a member of a recognized trade or professional association from citing membership, provided that a producer citing membership, if authorized only to sell insurance, shall disclose that fact.

(3) A producer shall not charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies if also acting as a financial planner.

[13.6.3.11 NMAC - N, 9/15/2019]

13.6.3.12 BENEFITS PAYABLE, LOSSES COVERED, PREMIUMS PAYABLE AND EXCEPTIONS:

A. Deceptive words, phrases or illustrations prohibited:

(1) Omissions and uses of information. No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission or 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 or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

(2) Exaggeration. No advertisement shall contain or use words or phrases such as “all,” “full,” “complete,” “comprehensive,” “unlimited,” “up to,” “as high as,” “this policy will help fill some of the gaps that Medicare and your present insurance leave out,” “the 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. The superintendent may determine whether language contained in an advertisement constitutes an exaggeration.

(3) Description of negative policy features. An advertisement shall not contain descriptions of policy limitations, exceptions or reductions, 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 six months.” Words and phrases used in an advertisement to describe these policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of the limitations, exceptions and reductions of the policy offered.

(4) Hidden costs of direct marketing. An advertisement of insurance sold by direct response shall not state or 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 these policies is a substantial cost in the marketing by direct response.

(5) Misrepresentation of expected benefits. No life insurance or annuity advertisement shall use the terms “investment,” “investment plan,” “founder’s plan,” “charter plan,” “deposit,” “expansion plan,” “profit,” “profits,” “profit sharing,” “interest plan,” “savings,” “savings plan,” “private pension plan,” “retirement plan” or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he or she will receive, or that it is possible that he or she will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

(6) Profits from hospitalization benefits. An advertisement that implies in any manner that the prospective insured may realize a profit from obtaining hospital, medical or surgical insurance coverage is prohibited. No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as “tax-free,” “extra cash,” “extra income,” “extra pay,” or substantially similar words or phrases because these 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. Complete and accurate explanation of tax implications is permitted.

(7) Representation of daily benefits payable. No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement, unless these statements of monthly or weekly benefit amounts are in juxtaposition with equally prominent statements of the benefit payable on a daily basis. The term “juxtaposition,” for this purpose, means side by side or immediately above or below. When the policy contains a limit on the number of days of coverage provided, the limit must appear in the advertisement.

(8) Assignment of benefits. An advertisement of a hospital or other similar facility confinement benefit that makes reference to the benefit being paid directly to the policyholder is prohibited unless, in making the reference, the advertisement includes a statement that the benefits may be paid directly to the hospital or other health care facility if an assignment of benefits is made by the policyholder. An advertisement of medical and surgical expense benefits shall comply with this regulation in regard to the disclosure of assignments of benefits to providers of services. Phrases such as “you collect,” “you get paid,” “pays you” or other words or phrases of similar import may be used so long as the advertisement indicates that it is payable to the insured or someone designated by the insured.

(9) Exceptions.

(a) No advertisement of a policy covering only one disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

(b) No advertisement of a policy covering only hospitalization shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to hospitalization so as to imply broader coverage than is the fact.

(c) An advertisement of a specified disease policy providing expense benefits shall not use the term “actual” when the policy only pays up to a limited amount for expenses. Instead, the term “charges” or substantially similar language should be used that does not create the misleading impression that there is full coverage for expenses.

(d) An advertisement that is an invitation to contract for a specified disease policy that provides lesser benefit amounts for a particular subtype of disease, shall clearly disclose the subtype and its benefits. This provision shall not apply to institutional advertisements.

(e) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall prominently and conspicuously state the limited nature of the policy. The statement shall be worded in language identical or substantially similar to the following: “THIS IS A CANCER-ONLY POLICY” or “THIS IS AN AUTOMOBILE ACCIDENT-ONLY POLICY.”

(f) An advertisement for a policy providing benefits for a specified disease or for hospitalization shall clearly state any limitations on coverage of recurrences of the disease or re-hospitalization for the same health condition, accident or injury.

(10) Limitations to provider selection. To facilitate the insured’s right of freedom of choice in the selection of insurance coverage, any advertisement or sales material furnished to a potential applicant relating to any policy that provides limited coverage in terms of the providers whose services are covered shall clearly disclose the provider limitations.

(11) Total benefit limits. Except for disability income insurance, an advertisement for coverage that covers only a certain type of loss is prohibited if:

(a) the advertisement refers to a total benefit maximum limit payable under the policy in any headline, lead-in or caption without also in the same headline, lead-in or caption specifying the applicable daily limits and other internal limits; or

(b) the advertisement states a total benefit limit without stating the periodic benefit payment, if any, and the length of time the periodic benefit would be payable to reach the total benefit limit.

(12) Statement of daily indemnity required. Advertisements that emphasize total amounts

payable under major medical, short-term or excepted benefits insurance coverage or other benefits in a policy, such as benefits for private duty nursing, are prohibited unless the actual amounts payable per day for the indemnity or benefits are stated.

(13) Use of atypical examples. Advertisements that include examples of benefits payable under a policy shall not use examples in a way that implies that the maximum benefit payable under the policy will be paid when less than maximum benefits are paid in an average claim. An advertisement shall not prominently display a total benefit limit that would not, as a general rule, be payable under an average claim.

(14) Selection of benefit level.

(a) When a range of benefit levels is set forth in an advertisement, it shall be clear that the insured will receive only the benefit level selected and issued and that the premiums will vary with the benefit level selected.

(b) When an advertisement refers to various benefits that may be contained in two or more policies, other than group master policies, the advertisement shall disclose that these benefits are provided only through a combination of the policies.

(c) Language that implies that the insured may select the benefit level at the time of filing claims is prohibited, including any implication that the amount of benefits payable under a loss-of-time policy may be increased at the time of claim or disability according to the needs of the insured.

(d) An advertisement for loss-of-time coverage that sets forth a range of amounts of benefit levels is prohibited unless it also states that eligibility for the benefits is based upon condition of health, income or other economic conditions, or other underwriting standards of the insurer, if that is the fact.

(e) A solicitation for variable life insurance shall provide any applicant with a summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors that affect such variation. Illustrations of benefits payable under the variable life insurance contract shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

(15) Implied bargains.

(a) Advertisements for policies with premiums that are modest because of their limited coverage or limited amount of benefits shall not describe premiums as “low,” “low cost,” “budget” or use qualifying words of similar import. The use of words such as “only” and “just” in conjunction with statements of premium amounts when used to imply a bargain are prohibited.

(b) The words “free,” “no cost,” “without cost,” “no additional cost,” “at no extra cost,” or words of similar import shall not be used with respect to any benefit or service being made available with a policy unless true. If there is no charge to the insured, then the identity of the payor shall be prominently disclosed. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium or use other appropriate language.

(c) An invitation to inquire may not refer to cost.

(d) An advertisement that implies that a common type of policy or a combination of common benefits is “new,” “unique,” “a bonus,” “a breakthrough” or is otherwise unusual is prohibited. The addition of a novel method of premium payment to an otherwise common plan of insurance does not render it new.

(e) An advertisement shall not include an offer of non-contractual benefits, typically considered an offer of rebate.

(16) Effective date of coverage.

(a) An advertisement for a policy that does not require the premium to accompany the application shall not overemphasize that fact and shall clearly indicate under what circumstances coverage will become effective.

(b) An advertisement that states or implies immediate coverage of a policy is prohibited unless administrative procedures exist so that the policy is issued within 15 working days after the insurer receives the completed application.

(17) Exaggerating mandated benefits. An advertisement that exaggerates the effects of statutorily mandated benefits or required policy provisions or that implies that the provisions are unique to the advertised policy is prohibited. For example, the phrase, “money-back guarantee” is an exaggerated description of the free-look right to examine the policy and is prohibited.

(18) Maximum benefits language. Language in an advertisement that states or implies that each member under a family contract is covered as to the maximum benefits advertised, where that is not the fact, is

prohibited.

(19) **Guaranteed issue policy.** An advertisement that contains statements such as “anyone can apply,” or “anyone can join,” other than with respect to a guaranteed issue policy, for which administrative procedures exist to ensure that the policy is issued within a reasonable period of time after the application is received by the insurer, is prohibited.

(20) **Nonguaranteed elements.**

(a) An advertisement shall not utilize or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.

(b) An advertisement shall not state or imply that the payment or amount of nonguaranteed elements is guaranteed. Unless otherwise specified in 13.9.14 NMAC, if nonguaranteed elements are illustrated, they shall be based on the insurer’s current scale and the illustration shall contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

(c) Unless otherwise specified in 13.9.14 NMAC, an advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed policy elements.

(d) An advertisement shall not use or describe determinable policy elements in a manner that is misleading or has the capacity or tendency to mislead.

(e) An advertisement may describe determinable policy elements as guaranteed but not determinable at issue. This description should include an explanation of how these elements operate and their limitations, if any. Additional requirements with respect to these products is found in 13.9.12 NMAC.

(f) If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer’s current or anticipated experience, the advertisement may indicate any such limitation on the insurer’s right.

(g) An advertisement may not state or imply that illustrated dividends under either a participating policy or a pure endowment or both will be or can be sufficient at any future time to ensure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at that time and the conditions required for that to occur.

(21) **Simplification.**

(a) An advertisement that contains statements such as “here is all you do to apply,” or “simply” or “merely” to refer to the act of applying for a policy that is not a guaranteed issue policy is prohibited unless it refers to the fact that the application is subject to acceptance or approval by the insurer.

(b) An advertisement shall not contain statements such as “no red tape” or “here is all you do to receive benefits.”

(22) **Age-related disclosures.**

(a) An advertisement that describes any benefits that vary by age shall disclose that fact. For example, a policy may contain a provision that reduces benefits fifty percent after age 60 although it is renewable to age 65. Likewise, if a life insurance premium is level and coverage decreases or increases with age or duration, that fact shall be disclosed.

(b) An advertisement that uses a phrase such as but not limited to “no age limit” if benefits or premiums vary by age or if age is an underwriting factor shall disclose that fact.

(c) An advertisement for a policy that provides for step-rated premium rates based upon the policy year or the insured’s attained age shall disclose the rate increases and the times or ages at which the premiums increase.

(d) Provision for the elimination of certain hazards at any specific ages or after the policy has been in force for a specified time shall be set forth.

(23) **“Individual” selection.** Advertisements, applications, requests for additional information and similar materials are prohibited if they state or imply that the recipient has been individually selected to be offered insurance or has had his or her eligibility for the insurance individually determined in advance when the advertisement is directed to all persons in a group or to all persons whose names appear on a mailing list.

(24) **Deductibles and coinsurance.** An advertisement that is an invitation to contract that fails to disclose the amount of any deductible or the percentage of any coinsurance factor is prohibited.

(25) **Special awards.** Special awards, such as a “safe drivers’ award” shall not be used in connection with advertisements of accident and health insurance.

B. Premiums:

(1) Premium changes.

(a) Advertisements that state or imply that premiums will not be changed in the future are prohibited unless the advertised policies expressly provide that the premiums will not be changed in the future.

(b) An advertisement that describes a policy for which the insurer reserves the right to change the amount of the premium during the policy term, but which does not prominently and conspicuously describe this feature, is deemed to be deceptive and misleading and is prohibited.

(c) Advertisements shall not represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits unless that is the fact.

(d) Advertisements shall not use the term “vanish,” “vanishing premium” or a similar term that implies the policy becomes paid up to describe a plan using nonguaranteed elements to pay a portion of future premiums.

(e) An advertisement for a policy with non-level premiums shall prominently and conspicuously describe the premium changes.

(2) Premium amounts.

(a) An advertisement shall not state the premium amount for a policy unless it specifies the qualifying underwriting conditions under which the insurer shall charge such a premium.

(b) An advertisement shall accurately identify additional costs for endorsements and riders, and where the premium is referenced, the specific costs of those endorsements and riders in relation to the premium.

(3) Withdrawal rights. An advertisement shall not contain a statement or representation that premiums paid for a life insurance policy can be withdrawn under the terms of the policy. Reference may be made to amounts paid into an advance premium fund, which are intended to pay premiums at a future time, to the effect that they may be withdrawn under the conditions of the prepayment agreement. Reference may also be made to withdrawal rights under any unconditional premium refund offer.

(4) Endowment benefits. An advertisement that represents that a pure endowment benefit has a “profit” or “return” on the premium paid rather than a policy benefit for which a specified premium is paid is deemed to be deceptive and misleading and is prohibited.

C. Exceptions, reductions and limitations: An advertisement that is an invitation to contract shall disclose those exceptions, reductions and limitations affecting the basic provisions of the policy, including but not limited to all of the following:

(1) Waiting period. 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 the loss, an advertisement shall disclose the existence of these periods.

(2) Required language. An advertisement shall not use the words “only,” “just,” “merely,” “minimum,” “necessary” or similar words or phrases to describe the applicability of any exceptions, reductions, limitations or exclusions such as: “This policy is subject to the following minimum exceptions and reductions.”

(3) Preexisting conditions:

(a) An advertisement shall, in negative terms, disclose the extent to which any loss is not covered if the cause of the 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 is prohibited.

(b) When an accident and health insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy shall 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. Use of the phrase “no medical examination required” and phrases of similar import are prohibited. If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required.

(c) When an advertisement contains an application form to be completed by the applicant and returned by mail, the application form shall contain a question or statement that reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant’s signature. For example, the application form shall contain a question or statement substantially as follows: “Do you understand that this policy will not pay benefits during the first [insert number] month(s) after the issue date for a disease or physical condition which you now have or have had in the past? YES or NO;” or substantially the following statement: “I understand that the policy applied for will not pay benefits for any loss incurred during the first [number] month(s) after the issue date on account of disease or physical condition which I now have or have had in the past.”

[13.10.4.12 NMAC - N, 9/15/2019]

13.6.3.13 INTRODUCTORY, INITIAL OR SPECIAL OFFERS AND ENROLLMENT PERIODS:

A. Applicability. This section applies to all advertisements by any one insurer. It shall not apply to solicitations of employees by a multiple employer welfare arrangement or members of an association that otherwise would be eligible under specific provisions of the Insurance Code for group or blanket insurance.

(1) The phrase “any one insurer” in this section includes all affiliated persons in a group of insurers under common management or control.

(2) The phrase “a particular insurance product” in this section means an insurance policy that provides substantially different benefits than 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 being offered as a different product eligible for concurrent or overlapping enrollment periods.

B. Substantial advantages. An advertisement of an individual policy or combination of policies shall not state or imply that the policy or combination of 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 that is an accurate statement of fact.

C. Usual method of advertising. An advertisement shall not contain phrases describing an enrollment period as “special,” “limited,” or similar words or phrases when the insurer uses these enrollment periods as the usual method of advertising accident and health insurance.

D. Enrollment period. An introductory offer shall specify the date by which the applicant must mail the application, which shall be not less than 10 days and not more than 40 days from the date on which the enrollment period is advertised for the first time.

E. Limited number or limited time. An advertisement shall 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.

F. Reference to full rate premium schedule. An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium.

(1) A reduced initial or first year premium may not be described as constituting free insurance for a period of time.

(2) When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode:

(a) the advertisement shall not display the amount of the reduced initial premium either more frequently, more prominently or more conspicuously than the renewal premium, and both the initial reduced premium and the renewal premium must be stated prominently in juxtaposition in each portion of the advertisement where the initial reduced premium appears; and

(b) all references to the reduced initial premium shall be followed by a prominent asterisk or other appropriate symbol that refers the reader to that specific portion of the advertisement that contains the full rate schedule for the policy being advertised.

(3) When rates that are subject to change as the result of a policy’s variable benefits or discounts are included and compared in an advertisement, they shall be accompanied by a disclosure so stating.

G. Exclusions. This section 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 his or her request.

[13.6.3.13 NMAC - N, 9/15/2019]

13.6.3.14 POLICY PROVISIONS RELATING TO RENEWABILITY, CANCELLABILITY AND TERMINATION:

A. Prominent and conspicuous disclosure of qualifying conditions required.

(1) An advertisement that is an invitation to contract shall disclose the provisions relating to renewability, cancellability, termination and any modification of benefits, losses covered or premiums because of age or for other reasons in a manner that shall not minimize or render obscure the qualifying conditions.

(2) Qualifying conditions that constitute limitations on the permanent nature of the coverage shall be disclosed in advertisements of insurance policies that are guaranteed renewable, cancelable or renewable at the option of the company. Examples of qualifying conditions are:

(a) age limits;

(b) reservation of a right to increase premiums; and

(c) the establishment of aggregate limits.

B. Required language. Advertisements of cancellable accident and sickness policies shall state that the contract is cancellable or renewable at the option of the company, as the case may be, in language substantially similar to the following: “This policy is renewable at the option of the company,” or “The company has the right to refuse renewal of this policy,” or “Renewable at the option of the insurer,” or “This policy can be cancelled by the company at any time.”

C. Disclosure of potential premium increase. Advertisements of insurance policies that are guaranteed renewable, cancelable or renewable at the option of the company shall disclose that the insurer has the right to increase premium rates if the policy so provides.

[13.6.3.14 NMAC - N, 9/15/2019]

13.6.3.15 STANDARDS FOR MARKETING:

A. Required procedures. An insurer, directly or through its producers, shall establish:

- (1) marketing procedures to ensure that any comparison of policies by its producers will be fair and accurate;
- (2) marketing procedures to ensure excessive insurance is not sold or issued, except that this requirement does not apply to group major medical expense coverage and disability income coverage; and
- (3) auditable procedures for verifying compliance with this section.

B. Prohibited practices. In addition to the practices prohibited in Section 59A-16-1 et seq. NMSA 1978, the following acts and practices are prohibited:

(1) **Twisting:** Knowingly making or issuing, or causing to be made or issue in any manner, any written or oral statement misrepresenting or making misleading comparison as to the terms, conditions, benefits or advantages of any policy for the purpose of inducing or attempting or tending to induce any other person to lapse, forfeit, surrender, borrow against, retain, exchange, convert or otherwise deal with or dispose of any policy;

(2) **High-pressure tactics:** Employing a method of marketing that has the effect of inducing the purchase of insurance, or that tends to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or that applies undue pressure to purchase or recommend the purchase of insurance; and

(3) **Cold-lead advertising:** Failing to disclose in a conspicuous manner that an advertisement is solicitation of insurance and that an insurer or insurance producer will contact the recipient.

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

(b) An advertisement or lead-generating device that is designed to produce leads either by use of a coupon, a request to write or to call the company or a subsequent advertisement prior to contact shall include information disclosing that an insurance producer may contact the applicant.

(4) **Use of unregistered business names.** No producer shall use an unregistered business name (DBA) to sell any insurance product.

[13.6.3.15 NMAC - N, 9/15/2019]

13.6.3.16 TESTIMONIALS OR ENDORSEMENTS BY THIRD PARTIES:

A. Use of testimonials, appraisals, analysis and endorsements.

(1) Testimonials and endorsements used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds as to the nature or scope of the testimonial or endorsement.

(2) Upon filing with the superintendent an advertisement that includes a testimonial or endorsement, an insurer shall submit an affidavit including the form number and stating that the testimonial or endorsement meets the requirements of Paragraph (1) of this subsection.

(3) The insurer, in using a testimonial or endorsement, makes as its own all of the statements contained therein, and the advertisement, including the statement, is subject to all the provisions of these rules.

(4) When a testimonial or endorsement is used more than one year after it was originally given, confirmation from the source that it continues to represent the source’s views shall be obtained and kept on file for a period of five years after the discontinuance of its use in advertising.

(5) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of five years after the discontinuance of its use or publication.

(6) The use of testimonials that do not correctly reflect the present practices of the insurer or

which are not applicable to the policy or benefit being advertised is not permissible.

B. Use of a spokesperson. A person shall be deemed a “spokesperson” if the person making the testimonial or endorsement:

- (1) has a financial interest in the insurer or a related entity as a stockholder; director; officer; employee; relative of a stockholder, director, officer or employee or otherwise;
- (2) has been formed by the insurer, is owned or controlled by the insurer, its employees or the person or persons who own or control the insurer;
- (3) has any person in a policy-making position who is affiliated with the insurer in any of the above described capacities; or
- (4) is in any way directly or indirectly compensated for making a testimonial or endorsement.

C. Disclosures.

(1) If a spokesperson has a financial interest in the insurer or related entity as described in Paragraph (1) of Subsection B of this section or is directly or indirectly compensated for making a testimonial or endorsement, that fact shall be disclosed in the advertisement. The requirement of this disclosure may be fulfilled by use of the phrase “paid endorsement” or words of similar import with emphasis at least equal to that used for the spokesperson’s name or the body of the testimonial or endorsement, whichever is more prominent.

(2) If the entity making the testimonial or endorsement is owned, controlled or managed by the insurer or receives any payment or other consideration from the insurer for making a testimonial or endorsement, that fact shall be disclosed in the advertisement.

(3) In the case of audio or video advertising, the required disclosure must be prominently given in the introductory portion of the advertisement.

D. Payment of spokesperson. The disclosure requirements of this rule shall not apply where the sole financial interest or compensation of a spokesperson for making a testimonial, appraisal, analysis or endorsement on behalf of the insurer consists of the payment of union scale wages required by union rules.

E. Endorsements by individuals and groups.

(1) An advertisement shall not state or imply that an insurer or an insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless that is the fact, and unless any proprietary relationship between an organization and the insurer or producer is disclosed.

(2) If the entity making the endorsement or testimonial has been formed by the insurer or producer, or is owned or controlled by the insurer or producer or the person or persons who own or control the insurer or producer, that fact shall be disclosed in the advertisement.

[13.6.3.16 NMAC - N, 9/15/2019]

13.6.3.17 DISCLOSURE REQUIREMENTS:

A. Prominence of disclosures. Any information that must be disclosed pursuant to this rule shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with other content of the advertisement so as to be confusing or misleading.

B. Omissions and misleading statements.

(1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or 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.

(2) 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 or that the policy or contract includes a “free look” period that satisfies or exceeds regulatory requirements, does not remedy misleading statements.

(3) An advertisement shall not use terms, including the words or phrases identified in this Section, that have a tendency to mislead the public as to the extent of benefits under an advertised policy.

(a) The terms identified in this Section do not represent a comprehensive list and are only examples. Such terms shall not be used to exaggerate benefits and shall not be used unless the statement is literally true in every instance.

(b) The use of the following phrases based on the terms or having the same effect are prohibited: “pays hospital, surgical, etc., bills,” “pays dollars to offset the cost of medical care,” “safeguards your standard of living,” “pays full coverage,” “pays complete coverage,” “pays for financial needs,” “provides for replacement of your lost paycheck,” “replaces income” or “emergency paycheck.”

(c) Other phrases might be acceptable so long as they are applicable to the type of

policy advertised. For example, the phrase “this policy will help to replace your income” is acceptable in advertising for loss-of-time coverage but is prohibited in advertising for a hospital confinement, including a hospital indemnity policy.

(d) In any advertisement, the phrase “no lifetime maximum” may not be repeated under each policy benefit or otherwise overemphasized. However, this does not preclude the use of the general statement in an advertisement that describes the manner in which any lifetime maximum is applied under the coverage.

(e) An advertisement that refers to “hospitalization for injury or sickness” and omits the word “covered” when the policy excludes certain sicknesses or injuries, or that refers to “whenever you are hospitalized,” “when you go to the hospital” or “while you are confined in the hospital” and omits the phrase “for covered injury or sickness,” if the policy excludes certain injuries or sickness, is prohibited. Continued reference to “covered injury or sickness” is not necessary where this fact has been prominently disclosed in the advertisement and where the description of sicknesses or injuries not covered is prominently set forth.

(f) An advertisement that fails to disclose that the definition of “hospital” does not include certain facilities that provide institutional care such as a nursing home, convalescent home or extended care facility, when the facilities are excluded under the definition of hospital in the policy, is prohibited.

(g) So as not to be misleading, the term “confining sickness” shall be explained in an advertisement containing the term. The explanation may be as follows: “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 the benefits are subject to confinement requirements. When sickness benefits are subject to confinement requirements, captions such as “Lifetime House Confining Sickness Benefits” or “Five-Year House Confining Sickness Benefits” are permissible.

(h) An advertisement shall not refer to dividends as “tax-free” or use words of similar import, unless the tax treatment of dividends is fully explained, the nature of the dividend as a return of premium is indicated clearly and a prominent disclaimer is included that states that the consumer should seek tax advice from a tax professional.

C. Medical examinations, questionnaires and waiting periods. If an advertisement uses “non-medical,” “no medical examination required,” or similar terms where issue is not guaranteed, such terms shall 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 set forth in the application. An advertisement that fails to disclose any waiting or elimination periods for specific benefits is prohibited.

D. Life insurance and annuity disclosures.

(1) An advertisement shall not use as the name or title of an annuity any phrase that does not include the word “annuity” unless accompanied by other language clearly indicating it is an annuity.

(2) An annuity advertisement shall not refer to an annuity as a “CD annuity” or deceptively compare an annuity to a certificate of deposit.

(3) An annuity advertisement shall emphasize the long-term nature of the contract.

E. Cost savings for direct response marketing.

(1) An advertisement of a policy marketed by direct response techniques shall not state or imply that because there is no producer or commission involved, there will be a cost saving to prospective purchasers unless that is the fact.

(2) No cost savings may be stated or implied without justification satisfactory to the superintendent prior to use.

(3) An advertisement using direct response marketing shall not use the words “inexpensive,” “low cost” or other phrase or words of similar import when the policies being marketed are guaranteed issue.

F. Graded or modified life insurance benefits.

(1) An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits.

(2) An advertisement of a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.

[13.6.3.17 NMAC - N, 9/15/2019]

13.6.3.18 USE OF STATISTICS:

A. Relevance. An advertisement relaying the dollar amounts of claims paid, the number of persons insured or similar statistical information relating to any insurer or policy shall not use irrelevant facts; the

advertisement shall not be used unless it accurately reflects all of the relevant facts. This type of advertisement shall not imply that the statistics are derived from the policy advertised unless that is the case, and when applicable to other policies or plans shall specifically so state.

B. Identification of specific policy. An advertisement shall specifically identify the insurance policy to which statistics relate and where statistics are given that are applicable to a different policy, the advertisement shall state clearly that the data do not relate to the policy being advertised.

C. Describing an insurer. An advertisement using statistics that describe an insurer, such as assets and liabilities, corporate structure, financial standing, age, product lines or relative position in the insurance business, may be irrelevant and may be prohibited if, in the opinion of the superintendent, it would tend to mislead the public. For example, an advertisement for accident and health insurance that refers to the amount of life insurance that the company has in force or the amounts paid out in life insurance benefits is prohibited unless the advertisement clearly indicates the amount paid out for each line of insurance.

D. Accuracy. An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts and includes a citation to the source. The age of statistics used in an advertisement shall not exceed two years.

E. “Generous” settlements. An advertisement shall not represent or imply:

- (1) that claim settlements by the insurer are “liberal” or “generous” or use words of similar import; or
- (2) that claim settlements are or could be beyond the actual terms of the contract. An unusual amount paid for a unique claim for the policy advertised is misleading and shall not be used.

F. Source of statistics. The source of statistics used in an advertisement shall be identified in the advertisement.

[13.6.3.18 NMAC - N, 9/15/2019]

13.6.3.19 COMPARISONS AND STATEMENTS:

A. Comparisons. An advertisement shall not directly or indirectly use unfair or incomplete comparisons of policies, benefits, dividends or premiums of policies offered by other insurers.

B. Statements. An advertisement shall not disparage competitors or their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance.

C. Non-substantive comparisons. Advertisements that state or imply that competing insurance coverages customarily contain certain exceptions, reductions or limitations not contained in the advertised policies are unacceptable unless the exceptions, reductions or limitations are contained in a substantial majority of the competing coverages.

D. Comparison of organizational structure. Advertisements shall not state or imply that an insurer’s premiums are lower or that its loss ratios are higher because its organizational structure differs from that of competing insurers.

E. Investment and tax values. Analogies between a life insurance policy or annuity’s cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments shall be complete and accurate. An advertisement shall not emphasize the investment or tax features of a life insurance policy to such a degree that the advertisement would mislead the purchaser to believe the policy is anything other than life insurance.

F. Policy loans. An advertisement shall not state or imply that interest charged by a competitor on a policy loan or the reduction of death benefits by the amount of outstanding policy loans is unfair, inequitable or in any manner an incorrect or improper practice.

G. Non-forfeiture values. If non-forfeiture values are shown in an advertisement, the values shall be shown either for the entire amount of the basic life policy, death benefit or for each \$1,000 of initial death benefit.

H. Individual deferred annuities or deposit funds. For individual deferred annuities or deposit funds, the following shall apply:

- (1) An illustration or statement containing or based upon nonguaranteed interest rates shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. The nonguaranteed interest rate shall not be greater than those currently being credited by the company unless the nonguaranteed 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.

- (2) If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it shall also disclose in juxtaposition thereto and with equal prominence the actual relationship between the gross and the net premiums.

(3) If the contract does not provide a cash-surrender benefit prior to commencement of payment of annuity benefits, an illustration or statement concerning the contract shall prominently state that cash-surrender benefits are not provided.

(4) An illustration, depiction or statement containing or based on determinable policy elements shall likewise set forth with equal prominence comparable illustrations, depictions or statements containing or based on guaranteed policy elements.

[13.6.3.19 NMAC - N, 9/15/2019]

13.6.3.20 PRENEED FUNERAL CONTRACTS OR PREARRANGEMENTS: An advertisement for the solicitation or sale of a pre-need funeral contract or prearrangement that is funded by a life insurance policy or annuity contract shall disclose all of the information set forth in 13.9.5.11 NMAC.

[13.6.3.20 NMAC - N, 9/15/2019]

13.6.3.21 CONFLICT WITH OTHER LIFE INSURANCE LAWS OR REGULATIONS: It is not intended that this regulation conflict with or supersede laws or regulations currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance, including laws or regulations addressing life insurance cost comparison indices, deceptive practices in the sale of life insurance, replacement of life insurance policies, illustration of life insurance policies and annuity disclosure. Consequently, no disclosure pursuant to or required under such laws or regulations shall be deemed to be an advertisement within the meaning of this rule.

[13.6.3.21 NMAC - N, 9/15/2019]

13.6.3.22 JURISDICTIONAL LICENSING AND STATUS OF INSURER:

A. An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

B. An advertisement may state that an insurer or insurance producer is licensed in a particular state or states, provided it does not exaggerate that fact or suggest or imply that competing insurers or insurance producers may not be so licensed.

[13.6.3.22 NMAC - N, 9/15/2019]

13.6.3.23 GROUP OR QUASI-GROUP IMPLICATIONS:

A. Invitations to join.

(1) An advertisement to join an association, trust or discretionary group that also is an invitation to join an association, trust or discretionary group must solicit insurance coverage on a separate and distinct application that requires separate signatures for each application. These required separate and distinct applications need not be on a separate document or contained in a separate mailing.

(2) The insurance program must be presented so as not to mislead or deceive the prospective members that they are purchasing insurance as well as applying for membership, if that is the case.

(3) An advertisement of a particular policy shall 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 that is the fact. An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company or group.

B. Implication of group rates. This rule prohibits the solicitations 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.

C. False distinctions. Advertisements shall not indicate that a particular coverage or policy is exclusively for "preferred risks" or a particular segment of the population or that a particular segment of the population is an acceptable risk, when the distinctions are not maintained in the issuance of policies.

D. Special group arrangements. Advertisements for group or blanket plans that provide a common benefit or a common combination of benefits shall not imply that the insurance coverage is tailored or designed specifically for that group, unless that is the fact.

[13.6.3.23 NMAC - N, 9/15/2019]

13.6.3.24 PENALTIES:

A. Fines. A person violating any provision of this regulation or knowingly participating in or abetting

such a violation shall be subject to penalties pursuant to Section 59A-1-18 NMSA 1978.

B. Retraction. The superintendent may require a person that makes an untrue or misleading statement in an advertisement to publish a correction or retraction of the untrue or misleading statement in the same medium and with the same prominence in which the original untrue or misleading statement was published.

C. State authority. Nothing in this section shall be construed to limit the power of the state to punish any person for conduct which constitutes a crime by statute or at common law, or to limit the statutory or common-law right of a person to bring action in court for an act related to the sale of insurance, endowments or annuity contracts.
[13.6.3.24 NMAC - N, 9/15/2019]

HISTORY OF 13.6.3 NMAC: [RESERVED]